

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

No. 77-6166

77-6166

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CARROLL BARNETT, HAROLD MCBRINE,
on behalf of themselves and all
others similarly situated,

Plaintiff-Appellees

v.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education,
and Welfare,

Defendant-Appellant

EXHIBITS TO BRIEF

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MONTHLY INDICATORS REPORT

Monthly Program Indicators

Monthly Operations Indicators

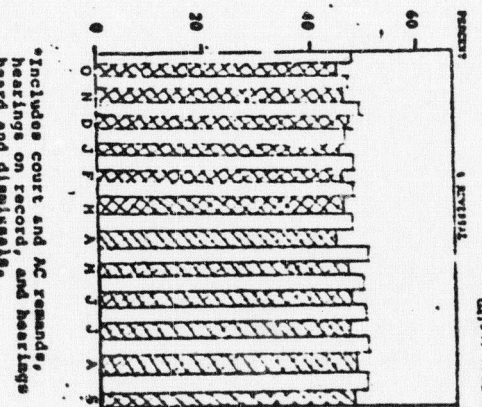
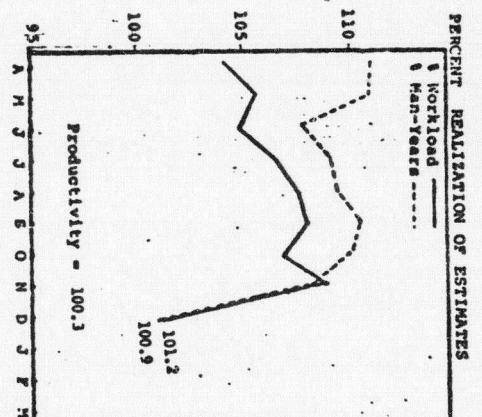
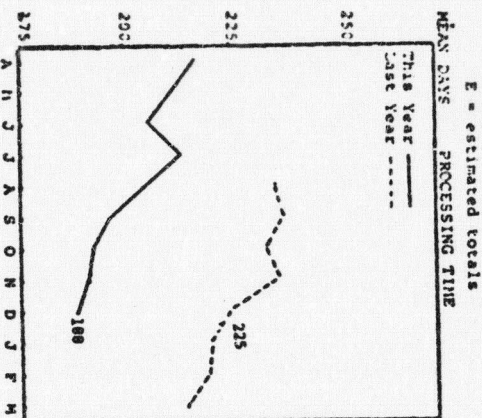
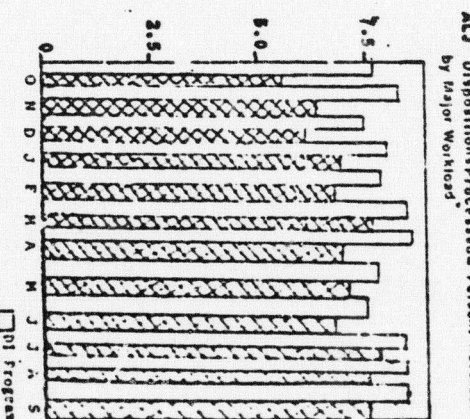
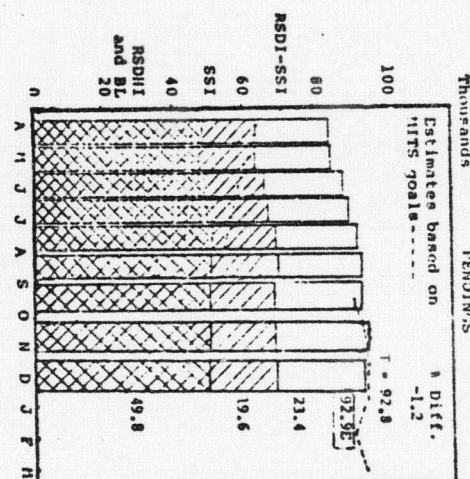
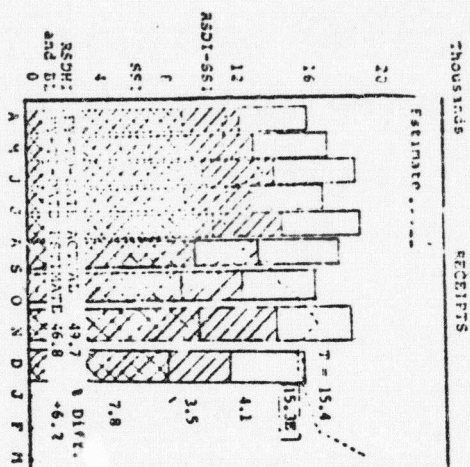
Monthly Administrative Indicators

Definitions of Terms and Sources

DECEMBER 1977

SOCIAL SECURITY ADMINISTRATION
Office of Management and Administration
2-SM

HEARINGS - BHA



DEFINITIONS

Receipts/pending includes all SSI, DI, SSI only, SSI concurrent, BL, and HI hearing cases. Processing time is measured from the date of the request for hearing to the date of final disposition of the request. Realization of estimates--the percent of the actual workload processed and the man-years used in relation to the budget estimate. Each month represents cumulative totals for the FY.

HEARINGS AND APPEALS OPERATIONS--HEARINGS

A. KEY DEVELOPMENTS

Receipts for December were the lowest since February 1977, but are 6.2 above estimates for the FY to date. Pending rose slightly but are on target with respect to MITS goals. Processing time again decreased (by 3 days) and at 188 is the lowest in the past few years and 37 days below December 1976 experience. Productivity is on target at 100.4%.

B. RECEIPTS

1. Objectives/Estimates
Receipts are expected to steadily increase from 49.8 thousand in the first quarter to 54.8 thousand in the last quarter of the FY.
2. Status/Analysis
December receipts are the lowest monthly level since February 1977. FY-to-date receipts, however, are 6.2 above estimates.

C. PENDING

1. Operational Objective
Reduce the volume of pending hearings from 94.0 thousand at the end of FY 77 to approximately 78.0 thousand by the end of March 1979 and 74.0 thousand at the end of FY 79. In the interim, the pending is estimated to temporarily increase to about 103.3 thousand by the end of FY 78 before increased manpower begins to have an impact on the pending.
2. Status/Analysis
Pending decreased moderately and are on target with respect to MITS goals.

D. PROCESSING TIME

1. Objectives/Estimates
BIA does not have any processing time goal as such.
2. Status/Analysis
Processing time again decreased (by 3 days) and now stands at 188 days; the lowest in the past few years and 37 days below the time recorded for December 1976.

E. REALIZATION OF ESTIMATES

Productivity remained steady and stands at 100.3%.

- F. NUMBER OF DISPOSITIONS PROCESSED AND PERCENT REVERSALS
 1. DI Program--Dispositions for September, the latest data available, totalled 8,005 with a reversal rate of 51.1%.
 2. SSI Program--Dispositions for September, the latest data available, were 7,532 with a reversal rate of 47.3%.

G. SUMMARY

This area is performing well. Pending are on target despite receipts which are moderately above estimates. Processing time continues to improve and is at the lowest in the past few years. Productivity is on target.

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OPERATIONAL ANALYSIS

OF THE BUREAU OF HEARINGS AND APPEALS

1975/76

SOCIAL SECURITY
ADMINISTRATION

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① Department of Health, Education, and Welfare
U.S. Social Security Administration
Bureau of Hearings and Appeals
BHA Pub. No. 032 (6-77)

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Hearing Requests—Received, Disposed, Pending by Program

REQUESTS	FY 1965	FY 1970	FY 1971	FY 1972	FY 1973	FY 1974	FY 1975	FY 1976
Received								
HIB-SMIB		2,324	4,395	6,180	6,023	2,717	1,518	1,214
DWIB		2,224	2,040	2,490	2,690	3,245	3,721	4,577
RSI	3,106	3,124	2,954	3,158	3,351	3,041	2,528	2,984
DISABILITY	20,217	34,901	40,712	56,346	52,314	67,284	74,780	77,812
BLACK LUNG			2,326	35,517	7,824	43,501	19,515	5,024
SSI ONLY						1,716	28,677	31,626
SSI CONC.							24,223	34,451
TOTAL	23,323	42,573	52,427	103,691	72,202	121,504	154,962	157,688
Disposed								
HIB-SMIB		1,735	2,892	4,857	6,371	4,631	1,822	1,400
DWIB		2,234	2,001	2,080	2,534	2,565	3,102	4,440
RSI	3,292	3,000	2,867	2,704	3,196	3,073	2,555	2,634
DISABILITY	20,101	31,511	37,541	44,048	53,368	55,613	63,915	78,372
BLACK LUNG				7,341	2,887**	14,780***	28,492	27,802
SSI ONLY						121	12,677	33,997
SSI CONC.							8,463	30,443
TOTAL	23,393	38,480	45,301	61,030	68,356	80,783	121,026	179,088
Pending								
HIB-SMIB		890	2,393	3,716	3,368	1,454	1,150	964
DWIB		687	726	1,136	1,292	1,972	2,591	2,728
RSI	729	988	1,075	1,529	1,684	1,652	1,625	1,975
DISABILITY	5,725	11,182	14,353	26,651	25,597	37,268	48,133	47,573
BLACK LUNG			2,326	30,502	4,839	33,292	24,315	1,537
SSI ONLY						1,041	17,041	14,670
SSI CONC.						554	16,314	20,322
TOTAL	6,454	13,747	20,873	63,534	36,780	77,233	111,169	89,769

SOURCE: HA-570

- Breakout of Title XVI and Concurrent Title II/Title XVI cases not available.
- ** Excludes 30,600 black lung cases remanded to BDI.
- *** Excludes 268 black lung cases remanded to BDI.

Administrative Law Judge Actions on Hearing Requests

ACTIONS	FY 1965	FY 1970	FY 1971	FY 1972	FY 1973	FY 1974	FY 1975	FY 1976
REVERSED	6,754	16,005	18,791	23,573	31,467	33,568	50,709	76,442
AFFIRMED	14,578	18,542	21,759	31,574	29,623	39,613	58,423	81,646
DISMISSED	2,061	3,933	4,751	5,883	7,266	7,602	11,894	21,000
TOTAL	23,393	38,480	45,301	61,030	68,356	80,783	121,026	179,088

SOURCE: HA-570



REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

Problems And Progress In Holding Timely Hearings For Disability Claimants

Social Security Administration
Department of Health, Education, and Welfare
Civil Service Commission

Individuals who are denied social security disability benefits wait an average of 8 months to obtain an appeals hearing and a decision on their claims. Delays are caused by the large backlog of hearing requests, problems arising from the nature of the hearing process itself, and shortcomings in obtaining and using hearing staff. The Social Security Administration is attempting to reduce the hearing workload by increasing its staff and productivity.

008

the bureau operates 10 regional offices, 10 regional development centers, and 154 hearing offices. The cost of operations in fiscal year 1975 was \$75.7 million.

The following chart shows SSA's hearing workload, productivity, and backlog for fiscal years 1971 through 1975.

	Fiscal year				
	1971	1972	1973	1974	1975
			(note a)		
Hearing requests	52,427	103,691	72,202	121,504	154,962
Dispositions	45,301	61,030	68,356	80,783	121,026
Cases pending (end of year backlog)	20,873	63,534	36,780	77,233	111,169
Number of presiding officers (note b)	295	392	462	503	613
Backlog per presiding officer	71	162	80	154	181
Annual average production for an experienced presiding officer	162	180	188	193	227

a/During 1973, 30,600 black lung cases were remanded for decision at a lower level because of a change in the criteria for eligibility.

b/Presiding officers include title II and black lung ALJs and, in 1975, hearing examiners who heard SSI cases only. Currently, all presiding officers are referred to as ALJs.

As of June 1976, 89,769 cases were awaiting hearings. This is a substantial reduction of the backlog from an April 1975 peak of about 113,000.

The hearing portion of the disability claims process begins when a claimant requests a hearing and the SSA district office forwards his file to the appropriate hearing office. The case is then assigned to an ALJ, who obtains necessary evidence and holds the hearing. The hearing is usually a claimant's first face-to-face meeting with someone who is adjudicating his claim; until then all decisions on a claim are based solely on the claimant's case file. At the hearing, which is confidential, the claimant testifies regarding his disability. Also, either the ALJ or the claimant or both may call upon vocational experts and physicians to testify concerning the claimant's work abilities and impairments. After the hearing, the ALJ may obtain any additional evidence

CHAPTER 2

PROBLEMS IMPEDING TIMELIER HEARINGS

The importance of prompt hearings cannot be overemphasized. Because of their disabilities, most claimants are temporarily--possibly permanently--unemployed and therefore in many instances unable to support themselves. The hearing process includes lengthy delays, aggravated by the fact that such delays occur after claimants have already experienced lengthy delays at previous stages of the claim process. Based on a sample of claims, we found that the entire disability claim process, from initial claim to hearing decision, averaged 17 months. The hearing segment of this process--from the claimant's request of a hearing to the rendering of a decision--averaged 8 months.

Delays in holding hearings are caused by

- the backlog of cases with hearings pending,
- the manner in which SSA implements the hearing process, and
- difficulties in obtaining and utilizing staff.

BACKLOG PROBLEMS

The backlog of cases has resulted mainly from increasing numbers of hearing requests. During fiscal year 1971, SSA received 52,427 requests for hearings; by fiscal year 1975, this number was 154,962. While ALJ production has increased during this period from an average yearly production of 162 cases to 227 cases per ALJ, this has not prevented a large number of cases from being left pending at the end of each year. Consequently, from fiscal year 1971 through 1975, the pending case backlog grew from 20,873 to 111,169. (See page 4.)

A major contribution to the backlog was the additional responsibility given to SSA for the Black Lung program. This program, authorized under the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801, et seq.), provided for the payment of monthly cash benefits to coal miners who are totally disabled because of black lung resulting from employment in coal mines and survivors of deceased coal miners who are entitled to such benefits. Claims for these benefits which were denied at lower levels resulted in approximately 78,000 requests for hearings.

Amendments to the act in 1972 (30 U.S.C. 901) compounded the problem by requiring reexamination of cases denied under the original legislation. Temporary ALJs were employed in fiscal year 1972 to hear some of these cases; however, many were heard by the already existing corps of ALJs, shortening the time these ALJs could spend hearing cases in their regular workload and causing backlogs.

As of January 1, 1974, responsibility for all future requests for black lung hearings was transferred to the Department of Labor (Public Law 92-303). SSA is expected to complete all black lung cases under its jurisdiction by about September 1976. However, pending legislation (H.R. 10760) to amend eligibility requirements would require SSA to redetermine black lung cases previously denied--estimated by an SSA official to number approximately 70,000.

Another major contribution to the backlog was the additional responsibility SSA incurred for the SSI program in 1974. The SSI legislation provided that qualified persons could be appointed as hearing examiners to conduct only SSI hearings without meeting the specific standards of the APA under which ALJs are appointed (Public Law 94-202). To deal with the SSI-appealed cases, SSA employed 122 individuals to be hearing examiners under this SSI provision.

The first request for a hearing on an SSI claim was received in March 1974. As of May 1976, the backlog had grown to 33,834 cases. Of this number, 20,095 were concurrent; that is, they involved a title II claim in addition to the SSI claim. SSA had originally estimated that approximately 11 percent of SSI claims would be concurrent. The actual proportion, however, has averaged 50 percent.

The large number of concurrent cases affected the backlog of SSI cases in two ways. First, the SSI hearing examiners did not have the authority to hear the title II part of the concurrent claim, whereas the ALJs had authority to hear both the title II and the SSI parts. SSA recognized the inefficiency of splitting the claim and holding two hearings; thus, the concurrent cases became an unanticipated additional burden for the ALJs. Second, because so many of the SSI claims were concurrent, the SSI workload was unexpectedly light for the hearing examiners in some locations.

A January 1976 amendment to the Social Security Act (Public Law 94-202) converted the hearing examiners to temporary ALJs and permitted the Secretary, HEW, to authorize them to hear all types of claims. On March 3, 1976, the

Secretary assigned the hearing examiners responsibility for concurrent and certain title II cases. This should lessen the burden of the regular ALJs in locations where the SSI workload is light and give temporary ALJs time to hear the newly assigned cases. It will have little effect, however, in other locations.

Effect of the backlog

A reasonable backlog is necessary to provide efficient management of an ALJ's caseload and continuity in his or her work. For example, while decisions are being prepared on some cases, others are awaiting hearings (the claimant must be notified at least 10 days in advance of the scheduled hearing date), and still others are awaiting additional evidence. Several ALJs told us that an ALJ averaging 30 decisions a month needs a backlog of approximately 100 cases to be efficiently employed.

Too large a backlog, however, impedes timelier hearings because new cases must be put aside for lengthy periods while action is taken on earlier arrivals. Many ALJs told us they could render decisions in approximately 30 days instead of 8 months if they had no cases pending and did not need to update evidence.

Too large a backlog also causes other delays throughout the hearing process. For example, cases initially delayed by the backlog often need to be updated when eventually reviewed because the claimant's condition has changed. Additional evidence regarding the claimant's condition must then be obtained, causing further delay.

The dispersion of the backlog also adversely affects prompt hearings. The backlog varies among hearing offices, and thus works inequities on claimants in different parts of the Nation. As of January 1975, the nationwide backlog per ALJ was 155. However, the average backlog per ALJ in the hearing offices we visited ranged from 73 to 268. A claimant in a low-backlogged area obviously has a much better chance of receiving a hearing earlier than a claimant in a high-backlogged area.

Factors contributing to increased appeals

Certain factors may contribute to more claims that necessary being appealed to SSA, consequently increasing the backlog. One of these factors is that State agencies

generally do not inform the claimant of the specific reason for which he or she was denied benefits; instead claimants generally receive form-letter denials of their claims. Denials for medical reasons contain a general explanation of disability criteria but not the specific medical reason for the denial.

In title II cases, the claimant is responsible for proving his claim. This may be difficult since the letters do not give specific reasons for denial. While we made no attempt to determine the number of claims appealed because a claimant did not understand why he was denied benefits, it seems reasonable that the use of form letters and the absence of specific, detailed reasons for denials encourage appeals. SSA has experimented with personal interviews at the time the applicant requests a reconsideration of his claim. This should help to correct the situation. (See p. 28.)

Another factor contributing to increased appeals is the criteria used for determining disability. Many ALJs and State agency officials with whom we met were of the opinion that ALJs and the State agencies applied different criteria in determining disability. They indicated that State agencies are bound by policies contained in their manuals while ALJs are bound by the law and regulations. ALJs must also be mindful of decisions rendered by Federal courts on disability cases. For example, the emphasis given by the courts to certain vocational factors such as age, education, and work experience may be different from that given in the States' manual.

The ALJs cited differences in application of criteria relating to

- interpretation of the extent to which psychiatric problems can be recognized as disabling;
- the need for consideration of the claim by vocational experts and the weight to be given these vocational considerations;
- the consideration of whether a claimant could be expected to work at other than his customary employment; and
- the weight to be given certain types of evidence admissible for SSA but not admissible in the courts.

Additionally, some differences exist between ALJs and State agencies due to the ALJ's personal contact with the claimant. This enables an ALJ to more fully consider the effect of such factors as pain and suffering on the claimant's ability to work.

Two studies done for SSA have also shown that ALJs and State agencies seem to be applying different criteria in their determinations. ^{1/} One of these studies, conducted by an SSA task force, indicated that there was a wide difference between State agency and ALJ evaluations and conclusions on the same facts. The other study, conducted by an SSA consultant, indicated that there were difficulties in applying the statutory definition of disability to borderline cases.

Interpretations of disability criteria also vary among ALJs. This is evidenced by the wide range of ALJ reversal rates--the rates at which ALJs reverse the decisions made at lower levels in the cases which come before them for hearing. Although it is understandable that ALJs' reversal rates may vary from State to State, ALJs within the same hearing offices often have varying rates. For example, the ranges of ALJ reversal rates in 1975 in the hearing offices we visited were as follows:

<u>Hearing office</u>	<u>Individual ALJ reversal rates expressed as a percent of cases they review</u>	
	<u>Lowest</u>	<u>Highest</u>
Cleveland	33	87
Dallas	35	55
New York City (Man- hattan)	30	60
Seattle	41	73

In February 1976, an agency official stated that SSA was considering amending its regulations concerning the application of vocational and educational factors by the ALJs in making disability determinations. It was also studying the criteria for different types of disabilities to determine where revisions are needed. As long as different criteria are applied, there is the possibility of claims reaching the hearing level which might have been awarded at a lower level had the criteria been the same.

^{1/}Report of the Disability Claims Process Task Force (SSA pub. 1975); Yourman, Report on Social Security Beneficiary Hearings, Appeals and Judicial Review (SSA pub. 1975).

PROBLEMS IN THE HEARING PROCESS

SSA's goal, to be attained by July 1977, is to issue a hearing decision within 90 days of the claimant's request for a hearing. We took a sample of 200 cases from four hearing offices (see page 7) to identify processing delays and compare SSA's processing time with its goal. As the chart on page 15 shows, cases in our sample for which processing was completed indicate that the hearing process averaged 248 days. Obviously, a number of problems will have to be overcome if SSA is to attain the 90-day goal. The problem areas revealed by examination of our case sample were

- delays due to SSA hearing offices failing to promptly receive the claimant's file;
- delays due to cases not being assigned promptly to the ALJs;
- delays incurred by the routing of SSI cases through development centers;
- delays caused by the scheduling and holding of hearings, including the travel of ALJs to hold hearings, the development of cases at the hearing level, and whether the claimant shows for the hearing when scheduled.

In addition to the above factors, which are discussed below in detail, the hearing process involves many people, activities, evidence requirements, and other factors such as

- the completeness of the claimant's file,
- the currency and adequacy of evidence supporting the claimant's case,
- the complexity of the issues,
- the ALJ's personal work habits, such as the extent to which he or she utilizes his or her staff,
- the ALJ's judgment as to the amount of evidence needed to make a fair decision, and
- the need to employ the services of outside parties and the promptness with which they respond.

The result is a relatively complex system, vulnerable to delay problems at numerous points.

Forwarding claim files

When a claimant requests a hearing, the SSA district office must forward his case file to a hearing office or a center established for the development of SSI cases. SSA considers 21 days to be a reasonable forwarding time.

The chart on the following page shows that the average forwarding time for cases we sampled was 26 days. Approximately one-third of the cases in our sample exceeded the 21-day target, averaging about 62 days. Forwarding time for the remaining two-thirds of the cases in our sample averaged only 8 days.

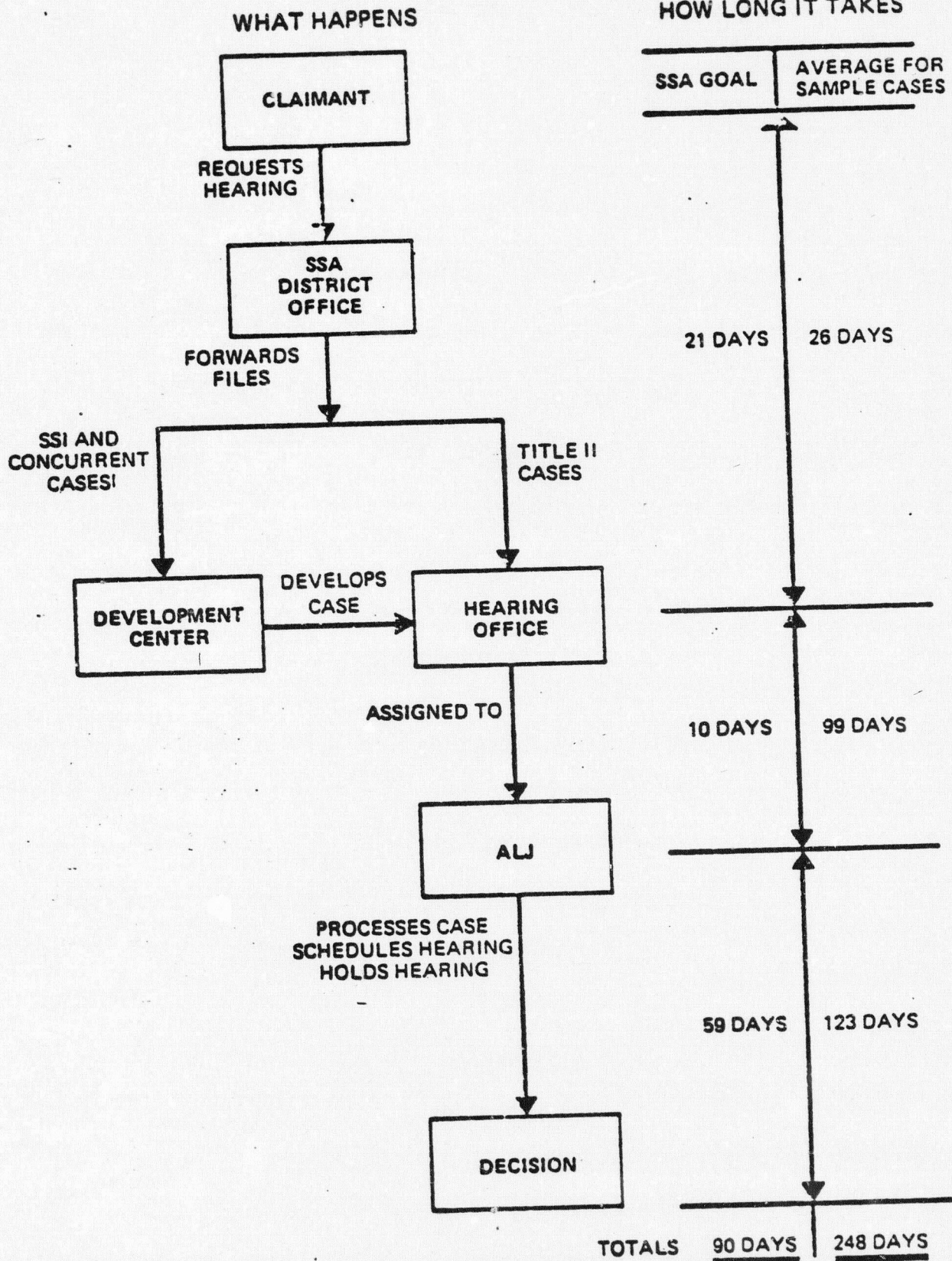
An explanation for the wide range in forwarding times in our sample may be a recent change in case forwarding procedures. Before the change, all title II claim files were sent after reconsideration to the Bureau of Disability Insurance in Baltimore, Maryland, and forwarded from there to the hearing offices. Under this procedure, a 1975 SSA study indicated that there were as many as 78 possible routings for most SSA claims. As a result, as many as 400,000 files could be expected to be absent from the files at any one time. These many routings and claims not in files made locating a claimant's file for forwarding to an SSA hearing office difficult. As of January 1975, however, most files are maintained at SSA's district offices after reconsideration until the 60-day time limit to appeal for a hearing has passed. There, problems of locating the file for forwarding to a nearby hearing office are minimized.

Over 80 percent of the 200 cases we sampled followed the change in forwarding procedures. This accounts, we believe, for the difference--8 days versus 62 days--in average forwarding times between the two groups of cases in our sample. In view of this apparent improvement, SSA's goal of 21 days for forwarding files seems overly conservative.

Assigning cases to ALJs

SSA's goal is to assign cases to ALJs within 10 days of receipt from SSA district offices. The average assignment time for cases we sampled, as shown in the chart on the following page, was 99 days. Assignment time depends in most cases on the procedures followed in individual hearing offices. Generally, a hearing office with a large backlog holds a case on a master docket longer than an office with a small backlog. The assumption is that it matters little whether a case waits on a docket or on the ALJ's desk.

THE HEARING PROCESS



While a case is on a master docket, however, there is little possibility that any action will be taken on it. If instead the case is assigned to an ALJ, he may, even granting his backlog, find the time and/or staff to begin preparing the case for hearing. SSA has recognized this and, as discussed on page 26, is experimenting with assigning case immediately to ALJs in selected hearing offices.

Development centers

The hearing process for SSI and concurrent cases differs slightly from the process for title II cases. The former are processed through regional SSA development centers before being forwarded to hearing offices and assigned to ALJs. Although the function of development centers is to conserve ALJs' time, they may delay cases needlessly because the work they do is often unused and/or duplicated by the ALJs' staff. In our sample, 42 percent of the cases went through development centers. On the average, it took each case 53 days.

Development center functions vary from region to region and may include assembling files, reviewing cases to identify those which could be immediately adjudicated or dismissed, obtaining evidence and preparing exhibits, summarizing facts and citing laws and regulations, and performing other duties which the regional chief ALJ may assign.

Many ALJs believe that the work done by development centers does not justify the time it takes. This results to some extent because ALJs have individual work habits and techniques, while development centers prepare all cases uniformly. For example, development centers we visited prepared lists of exhibits to be used in deciding the claim in accordance with SSA's manual. Some ALJs, however, have individual methods of preparing exhibit lists, and since they are not bound by SSA's procedures they may require their hearing assistants to redo this work. In other instances, ALJs may differ with development center analysts on the nature and extent of redevelopment needed.

Some ALJs do not obtain additional evidence before the hearing, preferring to wait until afterward because facts may be brought out which would warrant a reversal of the State agency's decision. Any case assigned to such an ALJ would be unnecessarily delayed if it were detained by the development center awaiting evidence. We found instances in which the development center held cases for more than 2 months awaiting evidence which the ALJ stated he would not have requested.

Another type of delay occurs when the development center obtains evidence and later the ALJ requests additional evidence. If the case had been assigned directly to the ALJ, all evidence could have been requested simultaneously. A 1975 SSA study of development center operations showed that in one development center this type of delay occurred in 18 percent of the cases examined.

More than one-third of our sample cases which went through development centers showed that the development center only summarized the facts, prepared exhibit lists, and assembled and forwarded the file to the hearing office. This took an average of 45 days. Although they read the summaries, ALJs we spoke to generally did not use the information contained in them.

In view of the lengthy and possibly unnecessary delays caused by development centers, it is unrealistic for SSA to expect cases going through development centers to be assigned to ALJs within 10 days.

Scheduling and holding hearings

SSA's goal is to schedule and hold a hearing and issue a decision within 59 days from the assignment of a case to an ALJ (except when the claimant causes delays or SSA requires a consultative examination from an independent physician). The chart on page 15 shows that in our sample, SSA took an average of 123 days to accomplish these activities. Only one-fourth of the cases sampled met SSA's goal of 59 days. Factors which delay the scheduling and holding of hearings follow.

ALJs' travel

Hearings are usually held within 75 miles of a claimant's home. Consequently, in many areas of the country, ALJs must travel to hold hearings. The travel reduces the time available for hearings and may cause delays for claimants. Within hearing offices, an attempt is made to assign cases in a particular area to one ALJ so that he or she will have enough cases to make a hearing trip worthwhile.

Delays due to travel occur in some areas because requests for hearings are infrequent. It may take months to accumulate enough cases for an ALJ's trip. While we could not associate a particular delay with the need to group cases for a hearing trip, several ALJs who travel told us that such groupings definitely contribute to delays for individual claimants.

An additional travel problem occurs when ALJs in low-backlogged offices are assigned to hold hearings in heavily backlogged offices. Cases may remain unassigned in the heavily backlogged office for a number of months prior to their transfer. Twenty-six percent of the cases we sampled had been transferred from a heavily backlogged office. These cases were delayed an average of 95 days prior to their transfer.

SSA has no formal written criteria concerning the intraregional transfer of cases. Such transfers are the responsibility of the regional chief ALJ. None of the regional chief ALJs with whom we met had a policy on the backlog level at which cases should be intraregionally transferred into or out of a hearing office.

SSA authorizes interregion transfers when there is an "excessive" backlog in a hearing office and (1) other offices within the region cannot render assistance because of their own backlog or (2) assistance could be provided more economically by a hearing office in another region because it is closer. However, this is only an operational policy, and there are no formal written criteria.

As of January 1976, SSA was attempting to formulate a policy on interregional and intraregional transfer of cases. Officials stated that they were attempting to determine what amount of backlog warranted transferring cases into or out of a hearing office.

Case redevelopment

Although ALJs are not required to obtain new evidence on claims, consideration of new evidence is the rule rather than the exception in disability hearings. Redevelopment at the hearing level by the ALJ--usually consisting of obtaining existing medical records or an independent physician's consultative examination of the claimant--accounted for more than one-third of the cases we reviewed.

Redevelopment may be occasioned by several factors. Often a claimant's record must be updated because his condition has worsened while awaiting a hearing. Sometimes, the ALJ may consider the State agency's development to be inadequate. Some State agency representatives told us that they generally obtain only that evidence which appears important to a claim. They do not obtain all evidence listed by the claimant because it is expensive and time-consuming and, since such a small percentage of claims are appealed, it is not worthwhile to obtain every medical report in anticipation of an ALJ's

needs. In some cases, redevelopment is necessitated by the claimant's changing the disability he originally alleged or submitting additional evidence.

ALJs redevelop cases differently. Some obtain all evidence prior to the hearing; others request evidence but do not delay the hearing awaiting its receipt; still others postpone requesting any evidence until after the hearing because additional evidence which makes the claim awardable may be produced at the hearing. Requests for medical evidence are usually made through the State agency, although some medical evidence may be requested directly from the source. Delays usually result regardless of the procedure used.

In our sample, the average time to redevelop a case amounted to 38 days. SSA and State agency representatives indicated that most of the delay in obtaining medical records was due to hospitals and physicians not responding to requests in a timely manner. A July 1975 study by the New York development center showed that in most SSI and concurrent cases it took more than 40 days to obtain medical reports from physicians and hospitals.

In cases we sampled which involved consultative examinations, an average of 71 days elapsed to request the examinations, complete them, and receive the results. The promptness with which examinations are completed, SSA recognizes, is largely within the control of the claimant and physician. Accordingly, SSA excludes such cases--13 percent of our sample--from its 90-day processing goal.

Delays in obtaining consultative examinations arise from several factors. State agency representatives indicated that shortages of medical specialists in some locations impede prompt examinations. The type of examination or medical test itself can also delay the process. For example, a consulting physician may require a claimant in a psychiatric case to visit him as many as three times to insure that a genuine mental disability exists. Sometimes, claimants themselves may delay the process by not appearing for a scheduled examination.

Claimant delays

SSA excludes cases which involve claimant delays from its 90-day processing goal. These largely uncontrollable delays, however, affect the length of the hearing process as well as the cost.

Of the cases we sampled, 18 percent involved claimant delays averaging 61 days. Reasons for delays included

- request for postponement of the hearing,
- failure of the claimant to appear for a scheduled consultative examination,
- failure of the claimant to appear at the hearing, and
- claimant requests to postpone issuance of a decision until additional evidence could be supplied.

Another kind of delay, we were informed, results from claimants waiting until the last possible moment to hire an attorney. As a result, the attorney is unprepared and may request a hearing postponement.

If a claimant has a valid reason for requesting postponement of the hearing or decision, the ALJ will grant one. Likewise, if the claimant has a good reason for his failure to appear for a consultative examination or a hearing, it will be rescheduled. However, if the claimant does not have a good reason, the ALJ may proceed without the claimant's having the benefit of a consultative examination or may dismiss the case if the claimant fails to appear at the hearing.

Failure by a claimant to appear for a hearing or examination wastes time and money. If a claimant does not keep an appointment for a consultative examination, the physician may charge the Government for the appointment. This happens approximately 20 percent of the time, a State agency official estimated. If a claimant fails to appear for a hearing or requests a last-minute postponement, not only may the ALJ's preparation time be wasted but the Government must pay any expert witnesses who were to appear at the hearing. Many ALJs said that failure of claimants to appear for a hearing was a problem. For example, one ALJ scheduled 41 hearings for a particular month; 14 of the claimants, 34 percent, failed to appear.

STAFFING PROBLEMS

Problems in obtaining ALJs contribute to hearing delays. SSA has not been able to obtain enough ALJs for all hearing offices. This has caused some hearing offices to consistently have a larger backlog per ALJ than others. As a result, claimants living in these areas generally wait a longer time for a hearing.

CSC administers the ALJ program for all Federal agencies employing ALJs. CSC establishes hiring qualifications, recruits ALJs by placing advertisements in national legal publications, maintains lists of eligible applicants, and approves promotions and transfers. Eligible applicants may be hired by any agency. Depending on their qualifications, ALJs may be eligible for positions at more than one salary level.

Many of the names CSC has provided SSA have appeared on prior lists. They mainly include individuals who have previously declined SSA employment, sometimes more than once, usually because (1) they are eligible for higher-salaried ALJ positions and are awaiting such appointments or (2) they are seeking positions in certain locations. Also included are individuals whom SSA has previously chosen not to employ. The following schedule illustrates this problem.

<u>Date of SSA request</u>	<u>Number of names forwarded by CSC</u>	<u>Number of names appearing on prior SSA lists</u>
June 1974	48	10
Mar. 1975	120	43
Sept. 1975	103	58

SSA prepares a list of cities in which it needs ALJs and sends it to the eligible ALJ applicants whose names are supplied by CSC. If none of the applicants are interested in employment in a particular city, SSA cannot fill the position. SSA's success in filling positions is shown in the following schedule.

<u>Date of SSA request</u>	<u>Number of ALJs needed</u>	<u>Positions filled</u>	
		<u>Number</u>	<u>Percent</u>
June 1974	25	19	76
Mar. 1975	75	43	57
Sept. 1975	50	23	46

Because of these unfilled positions, SSA officials stated that they hire ALJs where they can and transfer cases to them from offices with unfilled positions. This method of hearing cases is more costly and inefficient than having ALJs stationed in the offices where the hearings must be held.

The director of the office of ALJs of the CSC stated that he believed recruiting ALJs is not a problem and that a sufficient number of eligible applicants is available. He was aware that SSA had problems filling ALJ positions in some locations.

He had not, however, taken any specific action since SSA had not officially communicated its problem to him.

We believe SSA should have specifically notified CSC about problems it was having in hiring ALJs for certain locations. We also believe CSC, as administrator of the ALJ program, should have (1) recognized that SSA consistently did not hire as many ALJs as it stated were needed and (2) questioned SSA about these problems and then tried to find a solution. Although SSA is only one of the many Federal agencies for which CSC certifies individuals for employment as ALJs, special attention should be given to the needs of SSA because it employs over 50 percent of the ALJs in the Federal Government. The responsible CSC official stated that special efforts had been made in the past for other agencies. We see no reason why CSC, in cooperation with SSA, could not make special efforts to solicit applications from individuals residing in locations for which SSA has difficulty in hiring ALJs.

SSA officials told us that recent legislation permitting SSI hearing examiners to hear all types of cases has temporarily relieved the agency's ALJ shortage problem. This, of course, does not preclude a staffing problem arising in the future.

Inefficient use of staff

Hearing personnel are not utilized by ALJs as efficiently and effectively as possible. In addition, job descriptions do not clearly differentiate the duties of personnel at different levels of responsibility but overlap in many respects. As a result, staff members at different levels of responsibility and pay can carry out many of the same activities.

In addition to a basic staff which consists of a hearing assistant and secretary, some ALJs have an additional hearing assistant, secretary, staff attorney, or typist, or some combination of these. The main function of the hearing assistant is to prepare a case for hearing under the supervision of the ALJ. This includes identifying issues, obtaining evidence, and selecting exhibits. The function of the staff attorneys, who are higher-salaried employees than the hearing assistants, is to conduct legal research and assist ALJs in writing decisions.

Aside from the ALJ's staff, development centers, which prepare SSI and concurrent cases, are staffed with hearing analysts. Their responsibilities are similar to those of the

hearing assistant, but their salary level is generally the same as a staff attorney's.

In practice the duties performed by hearing assistants, hearing analysts, and staff attorneys are similar. Because each ALJ has developed individual work methods, each utilizes staff members in his or her own way. Further, the ALJ, rather than simply review his or her staff members' performance, may perform some of the duties assigned to staff members by their job descriptions. The following chart illustrates some case processing activities which are listed in the job descriptions of these employees.

<u>Activity</u>	<u>Assigned to and performed by</u>		
	<u>Staff attorney</u>	<u>Hearing assistant</u>	<u>Hearing analyst</u>
Identifies problems and defines issues	X	X	X
Analyzes evidence	X	X	X
Assures prior determinations were properly carried out		X	X
Compiles information into logical presentation		X	X
Summarizes facts	X	X	X
Prepares exhibit list		X	X
Obtains additional evidence	X	X	X
Prepares replies to inquiries	X	X	X
Conducts prehearing conferences with claimants	X	X	

To eliminate such overlapping of responsibilities, job descriptions should be revised. Employees who have been hired for a specific job at a specified salary should be utilized according to their job descriptions. This should result in a more efficient work flow and eliminate the waste of funds caused by using higher-level employees for lower-level tasks.

To illustrate, presently in some hearing units the staff attorney is responsible for identifying issues, obtaining evidence, and selecting exhibits; this results in the hearing assistant performing many secretarial tasks. In some units without staff attorneys, ALJs review the claim to identify issues and determine what further evidence is needed. In such units, in which staff attorneys or ALJs perform duties which hearing assistants are capable of performing, the skills of the higher-level personnel are not being utilized efficiently. Generally, the hearing assistants with whom we spoke believed that they could be of more assistance to the hearing unit, particularly if they had fewer secretarial duties.

CHAPTER 3

EFFORTS TO SPEED UP THE HEARING PROCESS

SSA's goal is to reduce the backlog and thereby achieve a 90-day hearing process for most cases by June 1977. To achieve this, SSA has implemented the following efforts aimed at increasing productivity and cutting hearing workload and backlog:

- Increasing ALJ productivity by urging additional effort and providing additional staff and improved equipment.
- Experimenting with model hearing offices in which new positions have been established, personnel responsibilities shifted, and case processing streamlined.
- Reducing the hearing workload by remanding potentially awardable cases to State agencies for review and personally contacting the claimant upon reconsideration of his claim to explain the basis of the denial for benefits.

INCREASING PRODUCTIVITY

SSA established the 90-day goal in September 1975. This was to be achieved, as noted above, after the backlog had been reduced through increased productivity. The target date is June 1977. To meet this objective, ALJs, aided by additional staff and improved equipment, were requested to increase productivity from 15 cases in each 4-week period (average productivity in fiscal year 1974) to 26.

Although SSA made no studies to support the prospect of ALJs reaching this productivity level, some had obtained the goal by December 1975. However, it is uncertain when the 26-case-per-4-week level will be reached by all ALJs.

ALJs we spoke to generally believed that with the addition of one or two support staff, a production goal of 26 cases per 4-week period is achievable; some believe that this number is low. The effect of staff increases had not been formally analyzed by SSA as of January 1976, yet productivity was already approaching the goal. Nationally, average ALJ productivity rose from 16 cases per period in January 1975 to 23 cases in January 1976. SSA reported that of its 636 ALJs, 171 had achieved the goal in the 3-month period ending December 6, 1975.

Regional chief ALJs with whom we met generally agreed that most ALJs were making an effort to increase productivity. They

cited peer pressure, additional staff support, and better equipment as the chief contributors to such an increase. However, the regional chiefs believe it to be physically impossible for some ALJs to hold enough hearings to produce decisions at this rate; they believe individual ALJs' work methods will be prohibitive in some instances. Additionally, some ALJs believe that the quality of their work would suffer too greatly to produce at this level.

Pressure to increase productivity could adversely affect the quality of decisions. Because not enough data was available, we were unable to determine whether SSA's efforts to accelerate productivity were having such an effect. SSA has, however, instituted a systematic quality assurance program which is expected to be fully implemented by September 1976. This system should enable SSA to monitor the effect increased productivity is having on the quality of decisions.

Additional staff

SSA made no cost-benefit studies to support hiring some of the more than 1,000 personnel who were added during fiscal year 1976. As a result, SSA had no assurance that the types and numbers of personnel hired would provide the greatest benefit.

Most of the additional personnel were support staff for ALJs. SSA, however, made no studies to determine the most efficient and effective staffing pattern for a hearing unit. Before these increases, few units deviated from the basic structure of ALJ, hearing assistant, and secretary, even though some ALJs had achieved considerably greater productivity with additional hearing assistants and secretaries. Several of the ALJs we interviewed indicated that restriction to the traditional two-individual basic staff interfered with their ability to increase productivity.

The most important additions to the ALJs' staffs were the staff attorneys which SSA began to hire in August 1975. The staff attorneys and clerk-typist assistants were assigned to certain ALJs to relieve them of prehearing and posthearing activities such as performing research, completing case records, and writing decisions. This was intended to allow ALJs to devote more time to holding hearings. As of January 1976, 168 of the 342 authorized staff attorneys had been hired and assigned to hearing offices. The staff attorneys and assistants are being hired as temporary employees for a 2-year period, after which SSA will make a decision regarding the continuation of the program.

SSA has been monitoring the results of the program, but it has no basis for assessing results. SSA anticipated that with 4 months' experience a staff attorney and clerk-typist would enable an ALJ to increase his or her production by a minimum of four cases per 4-week period. No study or testing prior to implementation was done to determine whether this goal was realistic or sufficient to justify the cost of the additional personnel. At the time of our review, many staff attorneys had only recently been assigned. Available statistics did not show increases in productivity attributable solely to the staff attorneys.

SSA plans to (1) evaluate the staff attorney program by comparing the cost and added productivity of staff attorneys with that of additional hearing assistants or secretaries and (2) compare the benefits of hiring additional support staff versus hiring more ALJs.

Model hearing offices

Three hearing offices were selected for a model hearing office study. Under the study, new positions were established, responsibilities were shifted among staff members, and the case flow was redirected within the office to eliminate duplicative efforts.

In establishing the model hearing offices, SSA recognized that duties of hearing assistants and secretaries overlapped, that differences in operating methods caused some units to work more efficiently than others, and that hearing office operations could suffer from a lack of control over such matters as assignment and scheduling of cases and utilization of equipment and resources. Accordingly, in the model hearing offices, SSA

- hired administrative officers to supervise the clerical staff and provide controls over the office operations and

- defined and standardized the duties of the hearing assistant and the secretary.

Case processing procedures were modified so that cases were assigned immediately to ALJs; in the past, cases were assigned either periodically or when an ALJ's caseload became low. The model method would permit each ALJ to be aware of his total workload and would permit his staff to develop as many cases as possible, independent of the ALJ's production.

The hearing assistant's responsibilities for attending the hearing to record testimony and to serve as a witness

were transferred to the secretary so that the hearing assistant's time could be devoted to preparing cases. To facilitate final typing, clerk-typists were appointed to operate automatic typewriters on which all draft decisions were prepared.

The first model office experiment began in November 1975. An SSA official stated that evaluations began in May 1976. By monitoring the time required for the various processing steps and the increases in productivity, SSA hopes to identify the effectiveness of the various changes. There are no goals concerning the increase in productivity which should result from these changes. The evaluation will be conducted by comparing the productivity of these offices with that of others in the regions and with national figures.

REDUCING THE HEARING WORKLOAD

Fewer requests for hearings would help reduce the backlog and, consequently, improve SSA's attempts to speed up the hearing process. SSA is making the following efforts to reduce the hearing workload.

Informal remand

Many State agency decisions are reversed by ALJs because a claimant's condition has deteriorated or new evidence has become available by the time a hearing is held. To eliminate these potentially awardable cases from the hearing process, SSA introduced an informal remand procedure in mid-1975. When a claimant requests a hearing and alleges that new circumstances have arisen, and such circumstances (such as a worsening of his condition) increase the likelihood of reversal, the SSA district office will return the case to the State agency. The latter has 60 days to update the file and render a decision. If the decision is favorable, there is no need for a hearing; if unfavorable, the claim reenters the hearing process in the place it would have had if it had not been remanded.

The informal remand procedure has the potential to considerably speed up the disposition of claims. It can reduce the number of hearings, thereby permitting SSA to hear other backlogged cases sooner. From the viewpoint of the claimant whose claim is awarded, the lengthy hearing process is avoided and he receives his benefits sooner. A claimant who does not receive an award often has had his file updated, and accordingly his claim should move through the hearing process faster. In hearing offices where there is no backlog, a disadvantage does exist to claimants whose decisions are not reversed by the State agencies. This is due to the 60-day period in which the State agencies must render their decision.

As of August 1976, SSA district offices had remanded more than 85,510 cases, of which 10 percent were awarded. The low rate of awards, we believe, indicates that SSA district offices are remanding too many cases. This may be due to the criteria which the district offices use in determining whether a case should be remanded. Current criteria merely require that the claimant allege a worsening or change in his condition. Generally, no supportive evidence is needed.

Since State agencies are reimbursed for informal remands, an excessive number of unawarded remands is very costly. For fiscal years 1976 and 1977, SSA estimates that about 150,000 cases will be remanded, at a cost of \$17 million. SSA officials told us they plan to evaluate the results of informal remand to determine what award rate would qualify the program as worthwhile. It should also be pointed out that the benefits of informal remand may be neutralized somewhat by recent legislation (Public Law 94-202). A claimant is now required to request a hearing within 60 days of the State agency's reconsideration decision. Previously, when a claimant had 6 months to make such a request, there was a greater chance of his condition deteriorating.

Reconsideration interviews

SSA conducted a study to determine if personally contacting the claimant upon reconsideration of his claim would prevent cases from reaching the hearing level unnecessarily. Unless the claim was clearly awardable when reconsidered, the State agency interviewed the claimant to explain the basis of the original denial, obtain an explanation from the claimant as to why he disagreed with the initial determination, and determine whether any additional evidence was available which would result in the claim being awarded. The study also had other advantages. For example, it gave the claimant an opportunity to add new material to his case at an early stage and made it possible for him to obtain a fuller understanding of disability requirements.

The study included (1) a control group of claims processed under normal reconsideration procedures according to which the claimant is not usually contacted by the State agency and (2) an experimental group processed under the new procedures. Results of the study in 16 States showed that the State agencies awarded more claims under the new procedures. Only 30 percent (1,955 of 6,592) of the claims in the control group were awarded, compared to 45 percent (3,148 of 6,924) in the experimental group. Additionally, a lower percentage of those in the experimental group whose claims were denied filed for a hearing.

SSA's preliminary estimates of this program indicate that full implementation in the first year would cost \$18.6 million. This, however, is expected to be offset by savings resulting from reduced workloads in SSA district offices and fewer hearings. This procedure is to be implemented over a 3-year period beginning January 1978.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Under SSA's present appeals system, there is no quick and simple solution to the problem of hearing delays. The most serious delay problem is the backlog. SSA will not be able to dispose of hearing requests within their 90-day goal until the backlog is considerably reduced. This will take time. Proposed legislation requiring SSA to rehear certain black lung cases will, if enacted, have a large effect on the system and may slow the progress being made by SSA.

Barring dramatic manpower increases or a radical restructuring of the hearing process, only time and improvements in its present adjudicatory system will enable SSA to move more rapidly toward its goal. Here too, unfortunately, SSA is impeded by some largely uncontrollable factors. Obtaining medical evidence, for example, is usually a necessary part of the hearing process. Yet, prompt submission of this evidence by hospitals or physicians is something over which SSA can exert little if any control. Nevertheless, we believe that certain elements of the hearing process can be improved, which should alleviate delay problems.

SSA is to be commended for recognizing the extent of its problems and attempting to resolve them. Since many of its efforts will require large expenditures, however, it is necessary that it properly test and evaluate experimental programs before their implementation to determine whether the benefits to be expected from them are worthwhile. Proper testing should also be done to establish the controls and evaluative standards which will be necessary to derive full benefit from the programs. For example, although the additional staff added by SSA can help to reduce the backlog, consideration should have been given to costs and benefits and to alternative variations of staff. Testing should also have been done to establish controls and reasonable evaluation standards. SSA added staff attorneys to the ALJs' staff without testing to determine what it could expect of them so that it could properly evaluate their performance and decide how they could be used to the fullest benefit. In view of the lack of these considerations, we could not have been achieved for less expense. The same holds true for other innovative but potentially costly programs such as the development centers and informal remands.

We recognize that SSA has been under pressure from the Congress and the public to hold hearings more promptly. Faced with a crisis, SSA believed it was necessary to take important actions immediately, such as hiring additional staff. We do not believe, however, that this justifies a lack of consideration for cost and efficiency. SSA should consider costs versus benefits, efficiency, and alternatives in the programs it has already implemented.

RECOMMENDATIONS

We recommend that the Secretary, HEW, direct the Commissioner, SSA, to

- assure that State agencies have procedures for informing claimants of specific reasons for denials of their claims;
- assure that the same disability criteria are applied by State agencies and ALJs;
- identify specific problems causing delays in forwarding claims files to hearing offices and seek solutions to these problems;
- wherever possible, assign cases immediately to ALJs instead of keeping them on master dockets;
- either eliminate development centers or establish clearly defined objectives aimed at (1) avoiding the duplication which currently exists and (2) closely tying development center functions to the needs of ALJs;
- review and revise policies on ALJ travel and transfer of cases to minimize hearing delays;
- officially notify CSC of its need for ALJs in specific problem locations in future hirings;
- clearly define job descriptions of hearing personnel to differentiate their responsibilities and take steps to assure that such personnel are used according to their job descriptions;
- establish stricter criteria for SSA district offices to follow in informally remanding cases to State agencies; and
- insure that studies of the beneficial value, necessary controls, alternatives, and evaluative standards for experimental programs are determined before implementation on a large scale.

DELAYS IN SOCIAL SECURITY APPEALS

HEARINGS BEFORE THE SUBCOMMITTEE ON SOCIAL SECURITY OF THE COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES NINETY-FOURTH CONGRESS FIRST SESSION

SEPTEMBER 19, 26; OCTOBER 3 AND 20, 1975

Printed for the use of the Committee on Ways and Means



LITY DETERMINATIONS
D APPEALS
DAR YEAR 1974

215,300

Reconsiderations
State Agency

Allowed	31 %
Denied	69 %
Appeals	

13,300

Appeals Council
Decisions

Allowed	14 %
Denied	86 %
Appeals	

Percent of Total Allowances	
Level	%
Initial	83.9
Reconsideration	11.4
Admin. Law Judge	4.2
Appeals Council	.3
U.S. Dist. Court	.2
TOTAL	100.0

Mr. BURKE. Our witnesses today are from the Social Security Administration and the Civil Service Commission. We will hear first from James B. Cardwell, Social Security Commissioner, and Robert B. Trachtenberg, Director of the Bureau of Hearings and Appeals. I think it will expedite the hearing and provide for a better discussion of the issues if we then allow Mr. Dulca, representing the CSC to make his direct statement and then we will go to questions.

STATEMENT OF HON. JAMES B. CARDWELL, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY ROBERT L. TRACHTENBERG, DIRECTOR, BUREAU OF HEARINGS AND APPEALS, AND CHAIRMAN OF THE APPEALS COUNCIL; SAMUEL E. CROUCH, ACTING DIRECTOR, BUREAU OF DISABILITY INSURANCE; AND DONALD A. GONYA, DEPUTY ASSISTANT GENERAL COUNSEL FOR SOCIAL SECURITY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. CARDWELL. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to appear before the subcommittee to discuss the appeals process as it affects the programs administered by the Social Security Administration—particularly the disability aspect of these programs.

I am accompanied by Robert L. Trachtenberg, the new Director of the Bureau of Hearings and Appeals and Chairman of the Appeals Council; Samuel E. Crouch, Acting Director, Bureau of Disability Insurance, and Donald A. Gonya, Deputy Assistant General Counsel for Social Security of the Department of Health, Education, and Welfare.

In order to place my statement in perspective, I would like to outline the major categories I will discuss: (1) The backlog at the hearings level and our perception of its causes; (2) our view of administrative, management, and programmatic initiatives needed to deal with the backlog; (3) the current status of the hearings process and the outlook for the future; and (4) a discussion of the reversal rate at the hearings level, a point that you have already mentioned, Mr. Chairman.

Before going into detail, it might be useful as background if we were to describe briefly the hearings and appeals process itself.

It all starts with the fact that a claimant who has been denied at the initial determination level, and again upon reconsideration, has a right to have his claim reviewed at an evidentiary hearing by an impartial individual who was not part of the initial and reconsideration process. It is this latter right that results in the hearings and appeals process. Depending on which program is involved—regular social security, black lung, or SSI—the impartial review will be conducted by either an administrative law judge or a hearing examiner—terms I will explain later in my statement.

At the hearing itself, the claimant is entitled to representation. In contrast, the Government is not represented by its own counsel.

A verbatim transcript of the hearing is taken, documentary evidence is received, and oral testimony is heard from the claimant. Often, at

the option of either the claimant or the hearings officer, testimony is heard from a vocational expert, a medical adviser, or both.

The hearings officer then issues a written decision, either affirming, modifying, or reversing the lower level decision. If the claimant is dissatisfied with the hearings officer's decision, he still has the right to a third and final level of administrative appeal—an appeal to the Social Security Appeals Council. The Council will review the case de novo if it involves OASDHI matters or on the basis of substantial evidence if it involves the SSI program. A decision by the Appeals Council represents the final administrative decision and is made on behalf of the Secretary of Health, Education, and Welfare.

If the claimant is still dissatisfied, he has the right to file a civil action in the appropriate U.S. District Court.

A claimant has 6 months within which to exercise his right to a reconsideration of any original adverse decision by SSA. He also has 6 months within which to exercise his right to a hearing within the hearings and appeals process and 60 days within which to exercise his right to be heard by the Appeals Council. Once all administrative remedies have been exhausted, he has another 60 days within which to appeal to the Federal court.

HEARINGS BACKLOG

With that brief background, permit me to move to the No. 1 problem of the moment—the backlog at the hearings and appeals level within the Social Security Administration.

We see the reasons for the backlog to be: (1) a one-time large volume of black lung cases and the advent of the SSI program at a time when the OASDHI program was experiencing rapid growth; (2) increased public awareness of social security programs in general, and the appeals process in particular, and increased representation by attorneys; (3) the individualized nature of the hearings, which causes a conflict between a high-volume workload and speedy case processing; and (4) looking at the matter from our own perspective within the Social Security Administration, impediments resulting from the way in which the Government assigns manpower to the process.

At the present time we have about 107,000 hearings requests pending before the Bureau of Hearings and Appeals. The median processing time for disability hearings in July 1975, for example, was about 7 months. Mr. Chairman, you have already pointed out that over half of those cases would obviously take longer than 7 months, and there are many extreme examples, including one that you pointed out, going beyond a year.

The backlog is the problem with which we must deal first. It is the problem to which we are giving our first attention through organizational, administrative, and management changes and improvements.

Shorter processing time is our objective. The shorter the processing time, the sooner we will have eliminated the backlog.

I would now like to discuss in some depth the reasons for the backlog as outlined above.

ADVENT OF NEW PROGRAMS

In recent years, as you know, a number of important and extensive programs have been added to the responsibilities of the Social Security

Administration. These c

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W PROGRAMS

umber of important and extensive
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Administration. These changes have impacted the hearings caseload.
In 1965 came the Medicare program, and then, in rapid succession,
the original black lung program in 1969, the amendments to it in
1972, and the supplemental security income program for the aged, dis-
abled, and blind in 1974.

In the same period, of course, the social security cash benefits pro-
gram was growing. Applications for social security disability benefits,
for example, have increased substantially over the past several years—
from an annual rate of 780,000 in 1970 to an annual rate of 1.2 million
in 1974.

Of course, it should have been expected that, as the responsibilities
of the Social Security Administration have grown and the beneficiary
population grew, the number of appeals it had to deal with would
grow.

The number of hearings requests filed has increased from 42,573 in
fiscal year 1970 to 154,945 in fiscal year 1975, and we anticipate ap-
proximately 141,000 will be filed in fiscal year 1976. Pending hearing
cases have steadily increased since 1973, reaching a total of 77,233 as
of June 30, 1974, and a high of over 113,000 in April 1975.

A substantial part of the present backlog has been the result of a
one-time large volume of black lung hearings requests. During fiscal
years 1973, 1974, and 1975, we received 70,500 black lung requests for
hearings. As you know, SSA responsibility for receiving and process-
ing claims under the black lung program has terminated. However,
we are still faced with hearing requests filed in connection with those
claims, and we had a pending black lung hearings workload of 17,857
as of September 13, 1975.

In addition, with the advent of the SSI program in January 1974, a
new workload has developed at the hearings level. More than 28,500
SSI hearings requests, plus an additional 24,200 SSI-OASDHI re-
quests for hearings were filed in fiscal year 1975.

INCREASED PUBLIC AWARENESS

In examining causes of the backlog, we should not ignore the phe-
nomenon of increased public awareness, as we find in other programs,
of the existence of the social security programs, and the capacity of
the Social Security Administration to be responsive to claims and ap-
peals. For instance, disability hearings, which constitute, by far, the
largest part of the hearings workload, showed receipts of 36,000 in
fiscal year 1973 and 75,000 in fiscal year 1975.

The value of the benefits payable to most disabled workers and their
families, as well as the availability of Medicare protection, once a per-
son becomes entitled to a disability benefit have led not only to an in-
crease in the number of applicants for disability benefits but also to
persistence in the pursuit of claims. More claimants seek legal repre-
sentation in pursuing their claims and attorney interest in taking such
cases has clearly increased.

With respect to increased attorney representation and other forms
of representation, it should be noted that there has been an increase
of 14 percent in attorney representation since fiscal year 1973, and an
increase of 20 percent in all forms of representation during the same
period. There is now some form of representation in 48 percent of all
cases. Moreover, we have seen an increase in representation by fed-
erally and State-supported legal services programs.

CLASSES OF HEARINGS OFFICERS, EACH WITH DIFFERENT JURISDICTIONS

This is a subject of great concern to us. In dealing with new hearings requests, we have been severely hampered by the necessity of working with three distinct categories of hearings officers. We have administrative law judges (ALJ's) appointed under the Administrative Procedure Act, who are only supposed to hear cases under OASDHI; temporary black lung ALJ's who hear only black lung cases; and SSI hearing examiners who can only hear SSI cases. In other words, we are limited in our authority to assign these hearing officers to the multiple programs.

You will, Mr. Chairman, hear a great deal about the problems this causes as we proceed, both from our own point of view and from the point of view of the Civil Service Commission. The result has been from our point of view a tremendous strain on the regular ALJ corps because, lacking the flexibility of a single integrated corps, the regular ALJ's have had to hear a large number of cases which, strictly speaking, were not within the purview of their appointments as ALJ's.

For instance, until we were able to hire a sufficient number of temporary black lung ALJ's, whose work is classified at the GS-14 level, the regular GS-15 ALJ's had to assume the burden of holding over 17,000 black lung hearings cases.

We do not plan any further use of regular ALJ's to dispose of the black lung backlog, except in some isolated cases. Moreover, we expect to complete all black lung hearings by early 1976. We do see that problem as generally coming into control and it is almost behind us.

As another example, the number of concurrent SSI-OASDHI claims, where we have to consider whether the claimant has an entitlement under either or both of the authorities, is steadily increasing and it is now 60 percent of all SSI hearings requests. The SSI hearing examiner (who is able to hear only SSI cases because of a ruling by the Civil Service Commission that SSI hearings do not require ALJ's who are appointed under the provisions of the Administrative Procedure Act) cannot be effectively used in these concurrent cases, unless we require the claimant to appear at two hearings—the SSI hearing before a hearing examiner and the OASDHI case before a regular ALJ. In this same regard, using a regular ALJ in the concurrent case means that he is technically performing, as to the SSI issue, work outside of the scope of his appointment, since he has been hired to handle cases within the purview of the Administrative Procedure Act.

NATURE OF HEARING PROCESS

As already noted, the nature of the hearings process limits our capability to deal with pending workloads. The present system, with the need to establish an evidentiary record which must be able to withstand judicial scrutiny, is a time-consuming and expensive process under the best conditions. Each hearing must be handled individually as a strictly human endeavor. An automated, electronic, or other mass production system is not possible although support systems are possible. Thus, the time and staff expended is grossly disproportionate to the volume involved.

The human nature of backlog, limits our capacity not lend itself to the. Nevertheless, I believe it is possible to achieve such goals, even though it is difficult to achieve.

It is our objective to process cases within 90 days of the receipt of the request, the delays caused by the medical examination, to require more time.

As already noted, our backlog from hearings requests has never been so large. Even before the onset of the Vietnam War and 1969, we did reach a goal in the successful implementation of a 90-day waiting period for the appearance of a hearing examiner; a required; consultative; and a well-reasoned record.

Finally, no discussion of the direct cost to the Government of \$400 and it is going to be \$100 million. State agencies in security and in assisting claimants.

No one, of course, knows the cost of the project of Hearings and Appeals. The cost will go up—more than \$100 million. By many estimates, the processing of 150,000 hearings cases.

OPPORTUNITIES

In our judgment, there are two choices for significant improvement. First, we can affect either the volume of cases or the time frames within which they are processed. First, we can influence the backlog by influencing the number of appeals being made at the prehearings action to determine whether cases are settled at an earlier stage.

DIFFERENT JURISDICTIONS

in dealing with new hearings by the necessity of working officers. We have administrative the Administrative Procedure cases under OASDHI; by black lung cases; and SSI cases. In other words, we these hearing officers to the

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PROCESS

e hearings process limits our ads. The present system, with record which must be able to nsuming and expensive process ; must be handled individually ated, electronic, or other mass ough support systems are posed is grossly disproportionate

The human nature of the process has a profound influence upon the backlog, limits our capacity to deal with high workloads, and does not lend itself to the establishment of clear-cut processing goals. Nevertheless, I believe it is necessary in this, or any program, to establish such goals, even though it is recognized that such goals may be difficult to achieve.

It is our objective to provide every individual with a hearing decision within 90 days of the request for hearing, excluding and barring any delays caused by the individual or by the need for a consultative medical examination, two circumstances which will by their nature require more time.

As already noted, our present median processing time is 7 months from hearings request to decision. It should also be noted that the agency has never been able to meet a 90-day median processing time even before the onset of the new workloads described earlier. In 1968 and 1969, we did reach 95 days, however. Nevertheless, I believe, with the successful implementation of the initiatives described later in this statement, a 90-day waiting period represents the optimum ultimate goal in a disability program where: Hearings are held locally; sufficient notice of the hearing must be provided; arrangements must be made for the appearance of a medical adviser or vocational expert—where required; consultative examinations must be ordered—where appropriate; and a well-reasoned decision must be rendered based on a sound record.

Finally, no discussion of the nature of the process should be concluded without a recognition of the fact that the process is costly. The direct cost to the Government for the average hearing is now in excess of \$400 and it is going to go up. In addition, there are many indirect costs, including those incurred by local social security officers and State agencies in securing additional evidence for the hearings officers and in assisting claimants in pursuing their rights.

No one, of course, knows how to quantify the cost to the claimant.

To process the projected hearings and appeals workloads, the Bureau of Hearings and Appeals will require annually—and this is why the cost will go up—more than 4,000 man-years and a budget in excess of \$100 million. By many standards, this would appear excessive for the processing of 150,000 hearings requests to conclusion.

OPPORTUNITIES FOR OPERATIONAL IMPROVEMENTS

In our judgment, there is not much room within the hearing process per se for significant and practical change or improvement that would affect either the volume of cases coming into the process or the time frames within which they might be adjudicated. We seem to have but two choices. First, we can increase the productivity of the hearings officers and other staff who carry out the process. The second way to influence the backlog would, of course, be to influence the number of appeals being made in the first place. To do this, we must look at the prehearings activities and the way in which we conduct them to determine whether cases now going to a hearing might not be better settled at an earlier stage. Thus, initiatives taken or planned to be

taken to reduce the backlog approach the overall problem from these two directions:

First: We are taking steps to increase the productivity of our hearings officers.

Second: At the same time we are initiating a number of changes designed to reduce the number of hearings requests filed.

STEPS TO INCREASE PRODUCTIVITY

As to efforts to increase productivity, there are a number of initiatives. The most significant are: (1) Additional staff; (2) removal of ALJ's and hearing examiners from nonjudicial functions, to clear away their assignments, so their assignments are focused more precisely on the basic rudiments of their share of the process; and (3) additional equipment and other resources which are being made available to hearings offices.

ADDITIONAL STAFF

At the present time, the Bureau of Hearings and Appeals, which is the organization within the Social Security Administration responsible for the administrative and programmatic direction of the hearings and appeals process, has 3,200 full-time permanent employees, of which 2,030 are in the hearings offices. Of the latter, we have 436 administrative law judges, 124 hearing examiners, and 95 temporary administrative law judges.

Included in these numbers are 62 administrative law judges and 37 hearing examiners who were appointed in the first half of 1975 and who will soon be reaching full productivity, which normally takes 9 months from the date of appointment. We have, in addition, recently requested a certificate to fill an additional 56 ALJ positions as soon as possible.

At this point, I should mention that we have attempted to appoint additional ALJ's in the numbers we believe are needed. However, the last register supplied to meet our need for 75 new ALJ's was not sufficiently extensive to enable us to appoint ALJ's to certain hard-to-fill offices in certain geographical locations. We were able to appoint only 43, considerably below our demonstrated needs. We are working with the Civil Service Commission to find ways to increase the size of the register and to secure ALJ's for the neediest offices.

The recruitment and placement process itself is proving to be cumbersome in our opinion.

Additional position allocations have been made available to the Bureau of Hearings and Appeals and, as a result, 258 additional support personnel were authorized to those hearings officers who had demonstrated that they could dispose of more cases with such assistance. Further, a substantial number of hearings and appeals analysts from BHA's central office were detailed to the field to assist hearings officers in drafting decisions and obtaining needed additional evidence. Also, about 200 staff attorneys were appointed to provide professional assistance to hearings officers.

REMOVAL OF THE ALJ

An integral relationship between administrative law judges and manpower is being developed, and thereby permit as possible to hearing offices.

From the manpower perspective, placing administrative law judges in many of the ALJ's, and (2) increase the assignment of cases to individual hearings offices.

From the programmatic perspective, steps designed to improve the initial and hearing officer from management have been developed at touch upon these initiatives.

ADDITIONAL

We have upgraded the hearing officers, including in hearings offices so expedited. In addition, and case locator system in each of our regional greater management responsive to the Congress reduce the volume of themselves.

REDUC

As I stated before, this also reduce the number have taken, or plan to take.

SCREENING

Experience shows that hearings level result from the passage of time for the material evidence affected experience, almost 40,000 were screened by disability allowed (or otherwise of record, and cases in a favorable decision. I

the overall problem from these the productivity of our hearing officers by initiating a number of changes and requests filed.

PRODUCTIVITY

there are a number of initiatives: (1) additional staff; (2) removal of nonjudicial functions, to clear up matters are focused more precisely on the process; and (3) changes which are being made available.

AFF

Hearings and Appeals, which are under the direct administrative direction of the hearing officers. Of the latter, we have 436 permanent employees, 436 examiners, and 95 temporary

administrative law judges and 371 in the first half of 1975 and productivity, which normally takes 12 months. We have, in addition, recently filled 56 ALJ positions as soon as possible.

we have attempted to appoint hearing officers. However, the need for 75 new ALJ's was not sufficient. We were able to appoint only 15. We are working with the courts to increase the size of the hearing offices.

The process itself is proving to be

has been made available to the public as a result, 258 additional support hearing officers who had been made available with such assistance. We have also appointed additional hearing officers to the field to assist hearing officers in providing additional evidence. We have appointed to provide profes-

REMOVAL OF THE ALJ AND HEARING EXAMINER FROM NONJUDICIAL FUNCTIONS

An integral relationship exists between programmatic improvements and manpower additions and the obvious need to remove the administrative law judge from as many nonjudicial functions as possible, and thereby permit that individual to devote as much of his time as possible to hearing cases and rendering decisions.

From the manpower standpoint, this will be accomplished by (1) placing administrative officers in the larger hearing offices, thus alleviating many of the administrative duties that have befallen to ALJ's, and (2) increasing the support staff available to the ALJ to prepare cases for hearing and to issue the decision promptly, including the assignment of 200 law clerks and recent law school graduates to individual hearing officers.

From the programmatic standpoint, we have taken a number of steps designed to improve the quality of the documented record established at the initial and reconsideration levels, and thus extricate the hearing officer from much of the case development work which could have been developed at an earlier stage in the review process. I will touch upon these initiatives later in this statement.

ADDITIONAL EQUIPMENT AND OTHER RESOURCES

We have upgraded the quality of the office equipment available to hearing officers, including the placement of over 90 mag card machines in hearing offices so that the rendering of the decisions may be expedited. In addition, we have installed the first step of a case control and case locator system, and already have placed computer terminals in each of our regional offices. This automated system will allow for greater management control over the caseload, permit us to be more responsive to the Congress on the status of cases, and, we would hope, reduce the volume of reporting required in the hearing offices themselves.

REDUCING THE NUMBER OF APPEALS

As I stated before, the need is to not only increase productivity but also reduce the number of cases in which a hearing is requested. We have taken, or plan to take, a number of steps in this direction.

SCREENING OF PENDING DISABILITY APPEALS

Experience shows that a substantial number of reversals at the hearing level result from further deterioration of impairments with the passage of time following the reconsideration determination as made on a prehearing basis, and also from the receipt of new and material evidence affecting the status of the individual. Based on this experience, almost 40,000 disability cases pending at the hearing level were screened by disability examiners to identify cases which would be allowed (or otherwise disposed of) based on the evidence currently of record, and cases in which additional development could result in a favorable decision. It appears that, when final actions have been

completed, more than 5,000 cases out of the 40,000 will have been removed from the hearings backlog by favorable decisions without the need for a hearing. An additional 5,000 will be better prepared for a hearing and thus should expedite the hearing because of the additional development undertaken.

INFORMAL REMAND PROCESS

As a sequel to the screening project, BHA and BDI are now testing nationally a new process—the "informal remand" of disability cases. This process calls for the referral of certain disability cases from field offices to State agencies after the claimant has requested a hearing but before the case is forwarded to the hearings officer. We estimate that as many as 72,000 new hearings requests will be reviewed by State agencies under this process in fiscal year 1976.

FACE-TO-FACE INTERVIEWS WITH DECISIONMAKERS

As the staff report has pointed out to the committee, we have also been testing a new procedure of face-to-face interviews between the claimant and the decisionmaker before the case gets to a hearing. It offers the claimant, whose application was denied and who requested reconsideration, the opportunity to discuss his case fully and completely with a State agency decisionmaker. By involving the claimant more fully in the decisionmaking process at that level, we hope to identify, at an earlier point in time, those claims that should be paid.

Additionally, where the decision is adverse, we expect the claimant to be more satisfied that he has been given a "fair shake" and will be less likely to request a hearing, which would not serve a very useful purpose. Of course, for those who do request a hearing, the file will be more fully documented.

REDUCING THE PERIOD IN WHICH THE HEARING MAY BE REQUESTED

Consideration should also be given to a change in the law which would reduce the period in which a claimant may request a hearing. After an initial adverse decision, the claimant has 6 months in which to request reconsideration of that decision. He also has another 6 months if his reconsideration produces a denial in which to decide whether to go to a formal appeal. If he has been denied under the appeals process he has 60 days in which to ask for review by the SSA Appeals Council. If he is turned down at that point, and by that point he will have exhausted all his administrative remedies under existing law, he has 60 days in which to decide whether to go to court. In other words, we have two 6-month periods and two 60-day periods. Our recommendation is that the whole process be set on a 60-day basis.

We believe this would not only have an improved effect on the present high reversal rate, a matter I will discuss shortly, but it should also reduce the number of requests for hearings filed. Under such a reduction of the appellate period, where there is new and material evidence, or worsening of the claimant's condition, the claimant could file a new application, and his claim would be adjudicated at an initial level rather than at a costly and time-consuming appellate level.

In our judgment this change would not deny due process.

Mr. Chairman, to use optimism based upon the past 9 months. Mr. point that if any significance it has really been as a result new Director of the Bureau. The record shows that, happen. To place this situation backlog as of April with SSA felt that the Indeed, had not some boys his staff beginning in January backlog of over 130,000 or then growing. Instead, stabilization of the backlog cases per month. Thus, 107,000 cases.

I certainly recognize it will not eliminate the backlog reduce processing time to I have hope that, with sustained at their current not yet know is the impact discussed earlier. We do demands and face-to-face interviews of hearings requested produce positive results, improve processing times.

RATE OF DISABILITY

Any discussion of the heavy recognition of the reduction heavy workloads. The recognition about this phenomenon.

In this regard, we cannot the claimant's condition when the hearing decision, more disabled at the hearing reviewed at the reconsideration the processing time will be more similar to the level more similar to reconsideration. The longer we we are to find differing cited earlier, that reduction request a hearing will improve.

The reversal rate—now disturbing, since it seems more favorable decisions considered in the light of are fully understood.

CURRENT OUTLOOK

of the 40,000 will have been 7 favorable decisions without 5,000 will be better prepared for the hearing because of the

PROCESS

HA and BDI are now testing "remand" of disability cases. In certain disability cases from the claimant has requested a hearing, the hearings officer. We estimate requests will be reviewed fiscal year 1976.

THE DECISIONMAKERS

On the committee, we have also face-to-face interviews between the case gets to a hearing. It was denied and who requested discuss his case fully and completely. By involving the claimant at that level, we hope to resolve claims that should be paid. Otherwise, we expect the claimant even a "fair shake" and will be would not serve a very useful request a hearing, the file will

HEARING MAY BE REQUESTED

to a change in the law which claimant may request a hearing. Claimant has 6 months in which decision. He also has another 6 as a denial in which to decide if he has been denied under the law to ask for review by the SSA at that point, and by that point alternative remedies under existing law whether to go to court. In other words, and two 60-day periods. Our process be set on a 60-day basis. Give an improved effect on the bill discuss shortly, but it should be hearings filed. Under such a law there is new and material change in condition, the claimant could be adjudicated at an initial non-consuming appellate level. Not deny due process.

Mr. Chairman, to use an oft used phrase, I hold a degree of guarded optimism based upon the preliminary results of our initiatives over the past 9 months. Mr. Chairman, I would like to emphasize at this point that if any significant change has occurred during that period it has really been as a result of the assignment of Bob Trachtenberg, the new Director of the Bureau, to the Bureau of Hearings and Appeals. The record shows that, since his assignment, things have begun to happen. To place this statement in perspective, one must recognize that the backlog as of April 1975 was over 113,000 and, frankly, many within SSA felt that the net backlog was destined to rise even further. Indeed, had not some bold and creative steps been taken by Bob and his staff beginning in January 1975, we could be faced today with a backlog of over 130,000 or more cases. That is the rate at which it was then growing. Instead, I can report that there has been not only a stabilization of the backlog but also a net decline, at the rate of 1,000 cases per month. Thus, we have now a backlog of slightly under 107,000 cases.

I certainly recognize that a decline of only 1,000 cases per month will not eliminate the backlog quickly enough and, likewise, will not reduce processing time to within reach of the goals that have been set.

I have hope that, with additional staff, productivity levels can be sustained at their current levels and indeed increased. What we do not yet know is the impact of the programmatic initiatives which I discussed earlier. We do not know if such procedures as informal remands and face-to-face interviews will significantly reduce the number of hearings requested. We assume that they will. If these efforts produce positive results, we can control the backlog sooner and also improve processing times more rapidly.

RATE OF DISABILITY REVERSALS AT THE HEARINGS LEVEL

Any discussion of the hearings backlog would not be complete without recognition of the relationship between a high reversal rate and heavy workloads. The committee has before it a good deal of information about this phenomenon.

In this regard, we cannot disregard the fact that, in disability cases, the claimant's condition worsens with time. Thus, the delay in rendering the hearing decision, in many cases, results in a claimant who is more disabled at the hearings level than he was when his claim was reviewed at the reconsideration level. We believe that improvements in the processing time will make the factual case decided at the hearings level more similar to the one which was reviewed upon reconsideration. The longer we stretch out the process time, the more likely we are to find differing circumstances. Also, I believe, as I have indicated earlier, that reducing the period in which an individual may request a hearing will improve the reversal rate.

The reversal rate—now approximately 50 percent—is, of course, disturbing, since it seems to indicate, on its face, that there should be more favorable decisions at a lower level. However, the rate must be considered in the light of several important factors, not all of which are fully understood.

First: In evaluating disability, various judgmental, interrelated medical, vocational, and educational factors must be considered. The multiplicity of these factors accounts for differing actions at differing times and differing levels.

Second: We are evaluating a particular person—not an average person, and each person is somewhat different—and the uniqueness of this individual can be brought into better focus in the individualized hearing process.

Third: In most instances the claimant and the decisionmaker first come face to face only at the hearings level. This provides the decisionmaker with the best opportunity to observe the claimant and to fully inquire into the person's condition. All these factors, in my opinion, play a significant role in the reversal rate, and thus a favorable decision at the hearings level does not necessarily mean that the prior decision was in error at the time made.

While these are the factors which I believe have an impact on the reversal rate, it should be observed that there are subtleties in the process which are undeterminable and largely uncontrollable, and which affect the reversal rate. The conditioning, the value set, the social outlook of the hearings officer in contrast to those same factors present in the original adjudicator can make a difference.

For instance, the education and background of the hearings officer is a factor. His concern about being reversed at the appeals council or district court level may also be a factor. For instance, there are such things as "paying" judges and "denying" judges. There are other such subtleties, all of which suggest that, in a system of jurisprudence and particularly in a disability program where the uniqueness of facts and not the law control the outcome of so many cases, we should expect a wide variance in judgmental decisionmaking.

We are striving to improve the consistency in decisionmaking at all levels by expanding the regulations to provide more definitive guidelines on the effect of adverse vocational factors in the evaluation of disability. Our hope is that by doing this we will smooth out some of the inconsistencies between regions and geographical centers and between individuals.

While we believe that this should provide more consistency, judgmental findings of fact will still have to be made and reasonable men can still arrive at different findings. We do not believe that truly consistent decisions can be achieved where findings of fact must be made as to an individual's residual capacity based on complex medical evidence, and other sometimes contradictory evidence. Based on the determined residual capacity, a judgmental finding must be made as to what jobs, if any, exist in significant numbers in the national economy which the particular individual can perform, considering age, education, and work experience. The courts in the various judicial districts have arrived at different decisions in cases where the pertinent facts were similar. We are, however, gratified that in fiscal year 1975, the courts found in favor of the Department in 84 percent of the disability cases decided.

CONCLUSION

Mr. Chairman, although we have taken a number of steps to reduce the current backlog and these steps have been fairly successful, we

are continuing to review the additional organizational, might be available to arrive

The very size of the various purposes, their applicability, effect benefits have on people and many other reasons. timely avenue of appeal. variations made on their acceptable, but the potential programs are added to the attempt to be as successful as, indeed

Mr. Chairman, that concerning Mr. Trachtenberg and my make ourselves available I wish to ask.

Mr. BURKE. We will now

STATEMENT OF CHARL ADMINISTRATIVE LAW

Mr. DULLEA. Thank you.

Mr. BURKE. Will you identify

Mr. DULLEA. I am Chairman of the Administrative Law Judges, U.S. Circuit

Mr. Chairman, my statement the interest of time if you highlight what is in the statement

Mr. BURKE. It is brief.

Mr. DULLEA. Thank you

Mr. Chairman and men opportunity to appear at the concern about the backlog Hearings and Appeals and by the Civil Service Commission

The Commission does not hearings and appeals procedure administers and manages like to provide the subcommittee assistance that may be of and reducing the backlog.

The disability program case load, affects a larger number by most other the Commission indicates 11 of the Social Security ability hearing cases in fiscal

The Agency's backlog I witnessed a vast expansion examiners—now called administrative Administration. A systems of the Administration some 15 referees.

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ISION

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are continuing to review the entire appeals process to determine what additional organizational, management, and administrative devices might be available to arrive at our goals more quickly.

The very size of the various social security programs, their social purposes, their applicability to all segments of the population, the effect benefits have on people's ability to provide for their basic needs, and many other reasons dictate that we provide an adequate and timely avenue of appeal where individuals do not agree with determinations made on their claims. The current processing time is unacceptable, but the potential for improvement exists if no new programs are added to the appellate processes and our initiatives prove to be as successful as, indeed, I hope they will be.

Mr. Chairman, that concludes my remarks. I would suggest that Mr. Trachtenberg and myself and the rest of us from Social Security make ourselves available for any questions that the committee might wish to ask.

Mr. BURKE. We will now recognize Mr. Dullea.

STATEMENT OF CHARLES J. DULLEA, DIRECTOR, OFFICE OF ADMINISTRATIVE LAW JUDGES, CIVIL SERVICE COMMISSION

Mr. DULLEA. Thank you, Mr. Chairman.

Mr. BURKE. Will you identify yourself for the record?

Mr. DULLEA. I am Charles J. Dullea, Director, Office of Administrative Law Judges, U.S. Civil Service Commission.

Mr. Chairman, my statement is quite brief. On the other hand, in the interest of time if you would care to have me just summarize or highlight what is in the statement I would be glad to do so.

Mr. BURKE. It is brief. You may take the time to read it.

Mr. DULLEA. Thank you.

Mr. Chairman and members of the subcommittee. I appreciate the opportunity to appear at this hearing this morning. The subcommittee's concern about the backlog of cases pending in the Bureau of Hearings and Appeals and the time required to process them is shared by the Civil Service Commission.

The Commission does not have direct authority with respect to the hearings and appeals procedures and the manner in which the agency administers and manages its disability program. However, it would like to provide the subcommittee with any pertinent information or assistance that may be of help in expediting the adjudication of cases and reducing the backlog.

The disability program, which constitutes the bulk of the Agency's case load, affects a larger number of citizens than the programs administered by most other Federal agencies. Information available to the Commission indicates that the disability cases received under title II of the Social Security Act amounted to approximately 73,570 disability hearing cases in fiscal year 1974.

The Agency's backlog has developed over a period of time that has witnessed a vast expansion in the number of section 11 APA hearing examiners—now called administrative law judges—in the Social Security Administration. After implementation of the personnel provisions of the Administrative Procedure Act, the Agency employed some 15 referees.

94th Congress }
1st Session }

COMMITTEE PRINT

SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

Appeals Process: Areas of Possible
Administrative or Legislative Action

PREPARED BY THE STAFF OF THE
SUBCOMMITTEE ON SOCIAL SECURITY



NOVEMBER 3, 1975

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APPEALS PROCESS: AREAS OF POSSIBLE ADMINISTRATIVE OR LEGISLATIVE ACTION

Summary

The staff believes that the most effective means of dealing immediately with the appeals crisis is to report out emergency legislation similar to that in section 3 of H.R. 8911 which has already been approved by the Public Assistance Subcommittee.

The statement of the administration that it will make fairly substantial inroads into the hearings backlog is based on the assumption that SSI and black lung hearing officers will be available to hear SSI and social security concurrent cases. On the other hand, H.R. 8911 will go further in eliminating the backlog by giving even greater authority to this group so that they can also hear social security and medicare cases. Moreover, clarifying amendments recommended by staff will make hearings conducted under the temporary authority less vulnerable to legal attack.¹

The administration has proposed an alternative to H.R. 8911 and the staff presents a critique of this proposal on pages 9-10. The staff's suggestions for technical and clarifying amendments to H.R. 8911 are presented on pages 10-12.

A number of bills and suggestions have been presented to the Subcommittee. They may have great merit, but the staff believes that it would be premature to act on them until the results of some rather significant studies, demonstration projects, and court cases² have been received, and the disability insurance program can be examined by the subcommittee in a comprehensive manner which we suggest be undertaken early next session. Moreover, other amendments might have the effect of complicating and making more controversial legislation which might otherwise be enacted in a short period of time. The appeals crisis is almost wholly the creature of the social security and SSI disability programs and although mandating by statute certain processing time limits might seem on the surface a desirable thing to do, such legislation might also have an adverse effect on the quality

¹ A class action has just been filed last month in a U.S. district court in New Jersey to enjoin the Secretary of HEW from using SSI hearing examiners, contending that the claimant is being denied due process in having his case heard before an individual who is "directly controlled" by the Secretary.

² The GAO is currently conducting two studies of substantial interest: (1) an examination of the State agency operation with emphasis on the variations among the States in how they adjudicate cases (2) an evaluation of efficacy of the vocational rehabilitation program for disabled beneficiaries which is financed out of the disability trust fund. The Social Security Administration is conducting a new study of the feasibility of conducting face-to-face contact at the reconsideration level. The case of *Mathews v. Eldridge* has been argued before the Supreme Court and a decision is now pending as to whether a "due process" type hearing must be given before disability benefits may be terminated. The Social Security Administration has instituted a contingency study to see how the State agency might carry out such hearings if the Government loses the *Eldridge* case. The so-called "informal remand" experiment has just been instituted by the Social Security Administration and its early results are too fragmentary to draw any conclusions.

and uniformity of disability adjudication which is already somewhat suspect. At present, the disability insurance system has a serious short-term and long-term actuarial deficit which was unanticipated and largely unexplained. Recent statistics indicate that this situation may be getting worse. The number of benefit awards for the period September 1974 to September 1975 was 20 percent higher than those for the 12 months preceding this period.

It should be noted that the Secretary has broad regulatory authority over the hearings and appeals process (see sec. 205 (a)) and a number of the major constituent parts of the process, such as mandatory reconsideration and appeals council review, are based on this general rulemaking power rather than specific legislative provision. In general this is desirable in preventing rigidity in the process when experience indicates that change is necessary and constant statutory modifications are not practicable. In the pages which follow areas of possible improvement by change in the regulations are also discussed by level of adjudication: initial, reconsideration, hearings, and appeals council.

Background

The social security appeals process has been relatively complex since its inception with agency, independent hearing officer, and court review of substantive decisions affecting beneficiaries. In the early years of the program, old-age and survivors appeals, although often presenting difficult problems in adjudication, were low in volume. In 1948, for instance, about 855,000 claims for benefits were filed but there were only 5,114 requests for reconsideration and 1,500 requests for hearings. The growth of the Social Security Act programs, primarily the establishment of the disability insurance program and disability under SSI, has changed all of this. In fiscal 1975, there were 4,665,000 claims filed, 456,000 requests for reconsideration and 123,825 requests for hearings.³ The disability programs—80 to 90 percent of appealed cases are in the disability area—have not only added to the appeals volume but they have increased administrative complexity since they resulted in new governmental entities being added to the system. These are the State agencies which make the initial determination of disability and the reconsideration decision if a reconsideration is requested. (As to old-age and survivors benefits, there is appeals adjudication solely by Federal employees.)

Commissioner Cardwell has pointed out the problems of a highly individualized hearing under the Administrative Procedure Act, in a high volume program. He stated in a recent hearing:

*** the nature of the hearings process limits our capability to deal with pending workloads. The present system, with the need to establish an evidentiary record which must be able to withstand judicial scrutiny is a time-consuming and expensive process under the best conditions. Each hearing must be handled individually as a strictly human endeavor. An automated, electronic, or other mass production system is not possible although support systems are possible. Thus, the time and staff expended is grossly disproportionate to the volume involved.

³ These statistics do not include Medicare appeals.

Workload, S

The current backlog of 107,000 requests for 1 can hear title 11, title examiners (who can black lung ALJ's (whings run out early ne appointments). It is t the next 3 months. It within the next 3 year

Mr. Trachtenberg, I states that the aim of up to 26 cases a mont cases per month but n

The following table of fiscal year 1975 co

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Under 10.....		
10 to 15.....		
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Commissioner Caro temporary authority t the hearing backlog year and eliminated i be on a 90-day basis l

The pending hea July 1, 1975:

Disability insurance.....
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Health insurance.....
Social security and SSI.....
SSI only.....
Black lung.....

Total

The estimated hea follows:

Disability insurance.....
Retirement and survivo.....
Health insurance.....
Social security and SSI.....
SSI only.....
Black lung.....

Total

Center for Administrative Justice
1776 Massachusetts Ave., N.W., Room 412
Washington, D.C. 20036

**FINAL REPORT
STUDY OF
THE SOCIAL SECURITY ADMINISTRATION
HEARING SYSTEM**

OCTOBER 1977

This report is made pursuant to contract No. 600-76-0110. The amount charged to the Department of Health, Education and Welfare for the work resulting in this report (inclusive of the amounts so charged for any prior reports submitted under this contract) is \$299,831. The names of the persons employed or retained by the contractor with managerial or professional responsibility for such work, or for the content of the report are as follows:

Milton M. Carrow, Director

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SUMMARY & CONCLUSIONS

Evaluation of the hearing process for Social Security claims (principally disability claims) must be attentive to several criteria that together define the quality of the hearing system. These qualitative criteria include the capacity of the system to produce accurate decisions, the consistency of decisions, the speed with which decisions can be made, the costs of the decision process and the acceptability of the process to affected interests. Concern has been expressed in the Congress, and elsewhere, that the BHA hearing system is currently producing inaccurate, inconsistent slow and costly decisions; decisions that are for one or all of these reasons increasingly unacceptable to the relevant constituencies. Suggestions for improvement along one or all of these quality dimensions abound. It has been proposed that BHA hearings be clearly exempted from the formal hearing requirements of the Administrative Procedure Act, that APA qualified Administrative Law Judges not be used to decide these cases; that the decisions be made not after "hearing," but after "examination" by a panel of experts; that the hearing process be retained, but made fully adversary; that one level of agency review be abolished; that judicial review be precluded or shifted to magistrates or an Article I court; that the substantive standard be changed, or at least sharpened by the development of regulations or precedent decisions.

Our general conclusion, after an exhaustive review of the literature on the system (including rich internal documentation), intensive investigation of four disparate BHA hearing offices - which included review of documents, observation of hearings and lengthy interviews with ALJs, staff personnel, claimants, claimants' representatives and expert witnesses - and a statistical analysis of a random sample of disability hearing records, is that the more dramatic proposals for reform of the system are inadvisable, either because they are not directed at real problems, because they would be on balance dysfunctional or because their effects are unknown. While the problems that have been identified by others do in various degrees infect the BHA system, we do not find the problems to be so overwhelming that an entirely new system is required. Moreover, we are convinced that significant reforms, of which we suggest a substantial number, must be very carefully analyzed before they are implemented. There are very few reforms that will improve all dimensions of the process at once. Every change requires a trade-off among relevant values.

We, therefore, present this summary in the hope that it is read with great caution. Whatever else we may be uncertain about, we have no doubt that the interrelationships among the many functions which comprise this system are so subtle and complex that facile generalization about what will happen to everything else if one feature is changed

is impossible. Consequently, anyone interested in utilizing this Report to design modifications of the present system must consult the detailed treatment in the body of the Report and confront the host of issues upon which the success of the proposed innovation will turn.

While we will try to capture the main conclusions of our Report in this summary, it is a poor substitute for the Report itself.

Accuracy

Investigation of the accuracy of the BHA hearing process, that is, whether decisions accurately distinguish between the truly disabled and the not disabled, leads very quickly to the realization that there is no accepted external standard for evaluating accuracy. As a consequence there is constant controversy about the meaning of disagreements among ALJ deciders - and between ALJ deciders and other decisional levels - concerning the proper outcome of cases. The indeterminacy generated by lack of an external referent is exacerbated by a shifting fact base from one level of decision to the next - the so called "open file" concept.

If one assumes that errors are costly, this problem is serious. Attempts to improve the accuracy of decision-making are constantly undermined by disputes about whether there is a real problem of inaccuracy, or one about which anything can be done.

ALJ reversal rates. The ultimate question, whether reducing variance through any of the available and costly techniques, is worthwhile, we are constrained to leave for political judgment.

Timeliness

The characteristic of the hearing process that most enrages claimants and congressman is its torpidity. The basic causes of the backlog of cases at BHA and the resulting delay are clear - an increasing demand for hearings without a corresponding increase in the resources available to process the cases. To some degree we also suspect that the caseload has recently become more difficult to process speedily, because caseload pressures on the state agency decision process are likely to have resulted in poorer development of the claim prior to its arrival at the BHA hearing office. Substantial, many ALJs believe, excessive, attention has been paid to this issue by all levels of BHA personnel and the Congress. Quite dramatic increases in productivity have been achieved through these efforts. Nevertheless, the backlogs continue, the appeal rate is going up and, by our estimate, claimants whether ultimately successful or unsuccessful are paying very high costs for this delay.

~~_____~~ We recommend several approaches to the problem of delay.

~~_____~~ The first and most general is really a caveat. The delay problem relates to only one aspect of decisional quality, albeit the most obvious and easily quantified characteristic.

Substantial changes to speed decision making, other than the commitment of more resources to the task, almost always run risks of lowering the quality of the process in other respects. Hence, beyond spending more money, great care should be exercised in making changes to speed the process. We have identified, nevertheless, several changes that might speed processing without a decrease in quality. The first is a qualifications system at the Civil Service Commission that will have a better prospect for supplying the BHA system's demand for APA qualified ALJs. Second, we believe that use of pre-hearing interviews might dramatically increase the number of on-the-record, short-form grants. Third, we strongly support the delegation of decision-writing to non-ALJ staff assistants and suggest that non-attorneys be used for this purpose.

Cost

The elimination of unnecessary costs in the BHA system is a constant focus of this Report. Unfortunately, almost every change requires a trade-off among relevant costs and many of these costs are not easily quantified. The direct costs of additional personnel to speed claims processing, for example, is much more easily quantified than the delay costs to claimants of failing to do so. We are, therefore, constrained at many points to make very rough estimates of the magnitude of the costs of doing one thing or another as

95th Congress }
1st Session }

COMMITTEE PRINT

{ WMCP: 05-10

SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

Background Material on H.R. 5723:
Conversion of Temporary Social
Security ALJ's



APRIL 18, 1977

NOTE.—This document has been printed for informational purposes only.
It has not been considered or approved by the subcommittee.

Prepared by the staff of the Subcommittee on Social Security

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1977

57-220 O

Purpose of Legislation

H.R. 5723 (with identical bills H.R. 5724, H.R. 5725, H.R. 6185, H.R. 6381 and H.R. 6495), introduced by James A. Burke, chairman of the Subcommittee on Social Security, and 69 cosponsors, is designed to overcome the inability of the Civil Service Commission to provide administrative law judges for the social security program. The result has been a loss of effectiveness of the hearings process and the increasing preoccupation of some 189 temporary hearing officers with their tenure and grade situation to the detriment of their ability to concentrate on their jobs. At the present time there are also 427 regular Social Security ALJ's which brings the total Social Security corps to 619. Moreover, we have recently learned that an attempt will be made to hire an additional 50 ALJ's in view of increasing workload and possible retirements. In March 1977, in spite of an average production rate of 27 cases per ALJ, receipts exceeded production by about 1,500 cases—18,000 receipts as opposed to 16,500 production. The backlog now stands at about 83,000 cases.

Public Law 94-202, signed by President Ford on January 2, 1976, was designed to resolve this long-standing problem. The legislation was developed by the Social Security Subcommittee after extensive hearings, testimony from the Civil Service Commission and the Department of HEW, interested administrative law judge organizations, and experts on administrative law and the social security appeals system. The main purport of the legislation was to improve and speed up the social security appeal process inasmuch as claimants were having to wait long periods of time for hearings on their cases. One of the provisions in Public Law 94-202 put all social security cases—social security, medicare, and SSI—under the same hearings and appeal procedures. It also authorized SSI hearing examiners to hear all these cases under the safeguards of the Administrative Procedure Act (APA) and stated that they should be converted to regular administrative law judges under the regular administrative law judge-APA appointment procedures. (The history of the dispute as to whether SSI was under the APA is described in appendix A.) These hearings officers warned the committee at that time that the Civil Service Commission would not move expeditiously on their applications, so the following language was included in the legislative reports—both Ways and Means and Finance—which stated in no uncertain terms that their experience adjudicating SSI cases should be given great weight and that there should be no lengthy bureaucratic delays in the appointment process.

The Committee on Ways and Means report stated:

The Office of Administrative Law Judges should be mindful of its ministerial responsibilities in supplying registers from which adequate numbers of ALJ's can be hired by HEW to adjudicate social security claims. There are indications that in the past these registers have not been supplied with the speed and with the number of candidates thereon which HEW needed to get better control over the hearings backlog. In evaluating current SSI hearings examiners for regular ALJ appointments great weight should be given to experience in actually adjudicating social security and

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 75-W-993

CHARLES SOLBERG, et al.,)
)
Plaintiffs,)
)
vs.)
)
DAVID MATHEWS, et al.,)
)
Defendants.)

REPORTER'S TRANSCRIPT
(Excerpt of Proceedings)

Proceedings before the HONORABLE FRED M. WINNER,
Judge, United States District Court for the District of
Colorado, for hearing on the class action motion, commencing
at or about 2:10 p.m. on March 18, 1976, in Courtroom E,
United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

BRIAN JEFFREY, Attorney at law, Colorado Rural
Legal Services, Denver, Colorado, and NORMA AARONSON, Attor-
ney at law, Colorado Rural Legal Services, Alamosa, Colorado,
appearing on behalf of Plaintiffs.

JERRE L. DIXON, Assistant United States Attorney,
Denver, Colorado, appearing on behalf of Defendants.

PROCEEDINGS

(Whereupon, arguments of counsel were had and entered of record but are not here transcribed pursuant to direction of ordering party.)

5 THE COURT: All right. The motion to make this
6 a action is denied, and let me explain. This is a
7 Complaint seeking injunctive relief, and injunctive relief
8 only. It is a case seeking an order out of me to tell the
9 Social Security to speed up.

10 I think it's extremely unfortunate that the claims
11 of these people cannot be ruled upon sooner. I think it's
12 extremely unfortunate that these delays are encountered. I
13 think it's equally unfortunate that deserving plaintiffs in
14 this court can't get their cases tried without a long delay,
15 but I don't think it's the Court's function to interfere and
16 to order the Social Security people to do the impossible.

17 They're working pretty long hours now, just as
18 the courts are working pretty long hours. The courts can't
19 handle their load because Congress won't give us the judges
20 and the courtrooms and the manpower; and Social Security can't
21 handle its load because the Congress won't give them the
22 employees, the administrative law judges, the office space
23 and the manpower.

24 And I can't manufacture the money sitting here on
25 this bench, and I do not think that it is the function of a

Judge to order it impossible. I am happy to say that even the Complaint does not suggest any conscious fault on the part of the Social Security people. Even the Complaint recognizes that there is no malicious or intentional delay.

There is just simply an impossible overload; but even if that were not so, Weinberger v. Salfi, I think, is absolutely determinative of the request here made for a class action; and I'll just quote briefly. Mr. Justice Stewart there said:

"In the present case, the complaint seeks review of the denial of benefits based on the plain wording of a statute which is alleged to be unconstitutional. That a denial on such grounds, which are beyond the power of the Secretary to effect, is nonetheless a decision of the Secretary for these purposes as has been heretofore established. As to class members, however, the complaint is deficient in that it contains no allegations that they have even filed an application with the Secretary, much less that he has rendered any decision, final or otherwise, review of which is sought. The class thus cannot satisfy the requirements for jurisdiction under 42 USC, Section 405(g). Other sources of jurisdiction being foreclosed by Section 405(h), the District

TRANSCRIPT OF REST OF PROCEEDINGS
OMITTED

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NOV 11 1976
U.S. District Court
District of Connecticut

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
HARTFORD, CONN.

GEORGE WHITE, on behalf of
himself and all others sim-
ilarly situated

-vs-

DAVID MATHEWS, Secretary of the
Department of Health, Education
and Welfare, as an individual and
in hi. official capacity

Civil No. H-75-34

JUDGMENT

IT IS HEREBY ORDERED that judgment be entered as fol-
lows:

IT IS HEREBY ADJUDGED that defendant's failure to pro-
vide a prompt administrative hearing and decision for those
Title II disability insurance benefit claimants residing in
the District of Connecticut who request an appeals hearing
before an administrative law judge denies plaintiff's and
his class' constitutional right to due process of law and
conflicts with the provisions of the Social Security Act, 42
U.S.C. § 405 et seq., and the Administrative Procedure Act,
5 U.S.C. § 555(b) et seq.

IT IS FURTHER ORDERED AND ADJUDGED THAT:

(1) The defendant is enjoined, ordered, and directed to
conduct administrative law judge hearings requested pursuant
to § 205(b) of the Social Security Act, 42 U.S.C. § 405(b), by
residents of the District of Connecticut claiming Title II

disability insurance benefits and to issue a written decision thereon within the following time periods:

(a) For any request filed before December 31, 1977, within a maximum time of one hundred eighty (180) days.

(b) For any request filed on or after December 31, 1977, but before July 1, 1978, within a maximum time period of one hundred fifty (150) days.

(c) For any request filed on or after July 1, 1978, within a maximum time period of one hundred twenty (120) days.

For purposes of computing these time periods, the aforementioned periods shall commence with the date of receipt by defendant of a formal written request for hearing filed pursuant to 20 C.F.R. § 404.918 and shall end with the earlier of the date of mailing of the written decision of the administrative law judge or the end of the 180th, 150th or 120th day, as applicable, following defendant's receipt of the written hearing request. In the event that the last day of the periods enumerated in subparagraphs (a) through (c) falls upon a Saturday, Sunday, or legal holiday (as defined by Fed. R. Civ. P. Rule 6(a)) the enumerated periods shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. The remaining exceptions of the time periods are set out in paragraph(4), infra.

(2) Defendant David Mathews is ordered to grant prospective payments to those claimants who fail to receive

their final decision within the maximum delays expressed in paragraph (1). In these instances, the entitlement shall be the first month after the month in which the maximum time period is exceeded and the last month of the entitlement shall be the month in which a written decision by the administrative law judge is issued. Nothing in this order shall be construed to require the payment of retroactive Title II disability insurance benefits based upon the alleged date of disability onset. Nothing in this order shall be construed to limit defendant's right to recover payments made under this paragraph if it is finally determined that the individual so paid is not under a disability for any period in which payments are made pursuant to this paragraph.

(3) The defendant after scheduling and rendering a decision, in accordance with paragraph (1), infra, shall certify payment to the petitioner with all reasonable dispatch.

(4) Exception from the maximum time periods set out in paragraph (1) occurs in those cases in which the claimant:

- (a) Directly causes a delay by his or her own failure to provide essential information for adjudication;
- (b) Requests a delay;
- (c) Fails to appear for scheduled hearing; or
- (d) The administrative law judge as a result of evidence adduced at the hearing or in the course of his post-hearing review in good faith determines that a consultative medical examination or additional medical evidence in the

possession of third parties is required. Provided, however, that the exception from the maximum time limit shall be limited to the time required to produce the evidence. Such additional material shall be obtained with all due diligence.

days

(5) Within sixty (60) days from the date of this decree, defendant David Mathews shall submit to the Court and to the plaintiff's attorneys a detailed statement or plan for implementing the relief required by paragraphs (1) and (2) on a continued basis, and the actual administrative steps taken to effectuate said plan. Any disputes between the parties as to whether the procedure and steps outlined by the defendant will fulfill the requirements of this decree shall be resolved by the Court.

(6) Within sixty (60) days from the date of this decree, defendant David Mathews shall submit to the Court and to the plaintiff's attorneys a detailed statement or chart indicating the number of claimants awaiting hearings or decisions which have not received final administrative action. Furthermore, for each individual claimant so situated, the chart will state the original date of the petition, the date of a hearing, or the final decision.

(7) Beginning with the petitions received on the 61st day after the entry of this decree and continuing thereafter, defendant David Mathews is directed to notify each petitioner for an administrative law judge hearing of his rights under

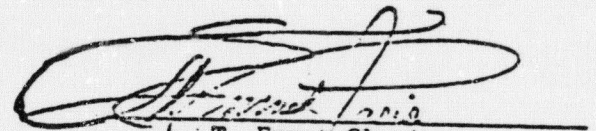
the decree by including a brief statement of the rights received by this decree. Said notice shall be included by attachment to the defendant's acknowledgement of the claimant's request for an administrative law judge hearing. The plaintiff and defendant will provide this Court with an agreed upon statement of notice to the claimant.

(8) This decree shall be binding upon the Secretary of Health, Education and Welfare when adjudicating hearings within the State of Connecticut.

(9) This Court shall retain continuing jurisdiction over this cause for all purposes.

SO ORDERED.

Dated at Hartford, Connecticut, this 28th day of October, 1976.


T. Emmet Clarie
Chief Judge

CONVERSION OF TEMPORARY ADMINISTRATIVE LAW JUDGES

SEPTEMBER 22, 1977.—Ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 5723, which on March 29, 1977, was referred jointly to the Committee on Post Office and Civil Service and the Committee on Ways and Means]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5723) to provide that certain persons who were originally appointed as supplemental security income hearing examiners under pre-1976 provisions of title XVI of the Social Security Act shall without any restriction be deemed appointed as administrative law judges, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SCOPE

The purpose of H.R. 5723 is to convert to regular Administrative Law Judges (ALJ's) the temporary ALJ's who were appointed under Public Law 94-202 to hear cases under titles II, XVI, and XVIII of the Social Security Act through 1978. These hearings officers have been conducting hearings under the provisions of the Administrative Procedure Act (APA) in the same manner as regular ALJ's. It was the intention of your committee in 1975 that they generally would be converted to the same status, tenure, and compensation as regular ALJ's. Moreover, such a development is highly appropriate since they are doing the same work as regular ALJ's in an equally effective manner.

GENERAL DISCUSSION

This legislation is necessary because the Civil Service Commission has disregarded the legislative intent of Public Law 94-202, clearly expressed in the reports of the Ways and Means Committee and the Senate Finance Committee, that these hearings officers would be expeditiously converted to regular ALJ status with "great weight" being given to their extensive experience adjudicating the social security definition of disability. After over 19 months only a handful

89-006

(1) Consistently bad decision writing which prevents proper award implementation;

(2) Lack of documentation of cases so that decisions are chronically decided on insufficient evidence;

(3) Blatant disregard to applicable law, regulation, and Social Security ruling; and

(4) A level of production of cases clearly inconsistent with the workloads and requirements of the Social Security program.

Your committee emphasizes that such conduct by a few individuals is not characteristic of the performance of the corps of Social Security ALJ's who are responding to the continuing appeals crisis in an exemplary manner. Your committee is also fully aware that the ALJ's independence from agency control must be safeguarded in accord with the provisions and spirit of the Administrative Procedure Act but "career-absolute" status is not a license for the complete neglect of a reasonable standard of conduct and job performance. The Chairman of the Civil Service Commission has written in answer to the question whether lack of productivity can be proper cause of adverse action by an agency:

The independence provided by the Administrative Procedure Act (the Commission classifies Administrative Law Judge positions and determines good cause for removal) is to safeguard the decisional process. Thus, apart from his decisional independence, the Administrative Law Judge is an employee of the agency, fully responsible and accountable for his conduct and performance of duty, and adherence to reasonable standards of production, if such standards have been established by the agency . . . "it should be the policy of all agencies to establish and enforce reasonable and realistic standards of performance in terms of work produced and time expended. Programs of this type dealing with standards and more effective case management have been established in a number of State and Federal courts. We are unaware of any impediment, legal or otherwise, to justify withholding the establishment and implementation of like programs from one class of employees."

The committee has been advised of, and supports the Bureau of Hearings and Appeals' position that failure to meet production goals will not be used as a basis of an adverse action, but that such action shall only be taken where an ALJ consistently fails to perform at a minimal level after proper warning is given and reasonable assistance is provided to increase productivity. The committee commends the Social Security Administration for its efforts and the success achieved in increased ALJ productivity but the agency must sustain quality by review of cases and adequate quality assurance.

The Civil Service Commission has indicated that it will take action against deficient ALJ's under the Administrative Procedure Act to remove "for cause" if charges are brought by the employing agency and they are sustained after a hearing. Although the Bureau of Hearings and Appeals maintains that such actions are "difficult and complex" they are in the process of preparing charges in a number of appropriate cases. This action is to be commended and encouraged.

SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

REVIEW OF STATE AGENCY DECISIONS
Is Quality Assurance Doing the Job?



FEBRUARY 21, 1978

NOTE. This document has been printed for informational purposes only.
It has not been considered or approved by the subcommittee

Prepared by the staff of the Subcommittee on Social Security

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

22-692 O

The quality of title II disability determinations appears much less favorable from available statistics and, due to their more subjective nature, are much more difficult to evaluate. The SPAR accuracy rate for initial determinations stood at 86.7 nationally for the 3-month period August-October 1977 and 84.6 for the 6-month period May-October. For allowances, it was only 76.4 percent for the May-October 1977 period. Just about half the States were over the national goal for the 3-month period, but slightly less than half were over the national goal for the 6-month period. The meaningfulness of the SPAR statistics and goals will undoubtedly be discussed by the GAO.¹¹

Although as noted earlier, complete agreement should not be expected, the differences between the deficiencies noted by some State agencies and Federal reviewers is worrisome. A BDI report on the period April-June 1977 noted:

Title II comparison of tier I [State] and tier II [Federal] deficiency rates.—Significant variances are noted upon comparing the tier I and tier II deficiency rates for the June 1977 quarter. The greatest of these were in Texas and Idaho where tier II deficiency rates exceed tier I by over 100 percent. In 13 DDS's, on the other hand, tier I deficiency rates exceeded tier II. In Indiana, the tier I rate was 27 percent higher than tier II.

Although Social Security Administration emphasis on the primacy of goals is about equal, the staff has gained the impression over the last 3 years that when either quality or quantity must yield, quality is the element sacrificed. One of the most often expressed rationales for this unwritten but pervasive doctrine is that Congress wants it this way. Bills with processing time requirements and the hundreds of thousands of constituent requests demanding expedited service are pointed to.¹² On the other side of the coin, the Subcommittee on Social Security and the full Committee on Ways and Means have expressed great interest in quality adjudication which would be uniform throughout the country. The House report on the Social Security Amendments of 1977 (H. Rept. 702, part 1) stated:

Although your committee's bill does reallocate very substantial revenues into the Disability Insurance Trust Fund and will provide adequate financing into the next century, attention must still be focused on why the costs of the program have risen so rapidly to a level far greater than anticipated. The possibility of not only reducing the cost of the program but also making it more susceptible to administrative control must be thoroughly explored (p. 2).

Failure to adequately document cases at the initial and reconsideration level in accordance with Federal standards may be playing a substantial role in the backlog and slowness of the hearing process. The Center for Administrative Justice report states:

*** to the extent that problems result from the failure of the State agency to assemble the essential documentation, the appropriate solution is a part of the general question of the adequacy of the job done at the State level. It does seem, however, difficult to think of any reason why documentation such as hospital records, which both are in existence and plainly relevant, should not be secured by the State agencies. We do not know the frequency with which the files, as they come from the State agency, are incomplete in this routine sense. The impression gleaned from talking to ALJ's and hearing assistants is that this

¹¹ Staff believes that there is some question as to their usefulness as an educational tool in the large States where normally only 2 percent of the cases are sampled. For instance, during the period May-October, only 21 cases were returned to the New York agency. Of course, in small States with a 25-percent sample, the returns may more adequately indicate trends in adjudication deficiencies in the State agency. However, a relatively small State agency visited by staff found relatively little educational value in SPAR title II returns.

¹² The bill of the Welfare Reform Subcommittee has a provision which establishes a 60-day time limit on SSI-type adjudications and calls for benefit payment "even in the absence of all information essential to the determination of eligibility."

occurs with substantial frequency. Vaporescence in this routine sense is the course of handling within BII information after the case reaches to some degree explains why major in BIIA's statistics rather than at l

Attempts to bring State agency current level may be undesirable. This possibility should be thoroughly Administration in drawing up to see that production goals did in New Jersey last year.

This print was designed primarily for members preparatory to the Office and the administrative report of the staff oversight staff's understanding that the institution of some type of allowances.¹³ In this regard, mixture to the mixed nature of mechanism both to change information on trends in Federal standards—the quality the first function, the system handful of decisions are changed some people who are unlikely gain benefit. Thus, this would this aspect of the sample review becomes purely a determination of disability at the initial level.

Options for the subcommittee might be retention of the preadjudicative review structural realignment with reliability that the system quality assurance mechanism

¹³ The administration's 1979 budget request that the Social Security Administration substantially reduced. The Office of Management and 140 in 1979. These resources were decreased and to increase review of and assistance. Such a move, however, might lead to loss. There have been indications of loss contrasted with pre-100-percent, believe as loosening up State adjudicators who are

tier II (Federal) deficiency rates.—Significant the tier I and tier II deficiency rates these were in Texas and Idaho where 100 percent. In 13 DDS's, on the other II. In Indiana, the tier I rate was 27

ration emphasis on the primacy gained the impression over the quantity must yield, quality is most often expressed rationales for it is that Congress wants it this time and the hundreds of amendments and the expedited service are in, the Subcommittee on Social Security and Means have expressed which would be uniform throughout the Social Security Amendments.

ocate very substantial revenues into
ll provide adequate financing into the
on why the costs of the program have
stipated. The possibility of not only
aking it more susceptible to adminis-
(p. 2).

ases at the initial and recon-
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Unless as an educational tool in the large States. For instance, during the period May-October, 1950, in small States with a 25-percent sample, reading deficiencies in the State agency. However, very little educational value in SPAR title II

vision which establishes a 60-day time limit on
in the absence of all information essential to

occurs with substantial frequency. We also do not know how much of the incompleteness in this routine sense is the result of material being misplaced during the course of handling within BHA. All that can be said is that securing this information after the case reaches the ALJ takes the time of skilled people and to some degree explains why major delays in the SSA decision process show up in BHA's statistics rather than at lower levels.

Attempts to bring State agency processing time much below the current level may be undesirable because of their effect on quality. This possibility should be thoroughly considered by the Social Security Administration in drawing up their State agency goal and steps taken to see that production goals do not cause perversion of the process as in New Jersey last year.

This print was designed primarily as background for subcommittee members preparatory to the testimony of the General Accounting Office and the administration later this month. It also serves as a report of the staff oversight activity in quality assurance. It is the staff's understanding that the administration is considering the re-institution of some type of comprehensive Federal review of State allowances.¹³ In this regard, we would call attention of the subcommittee to the mixed nature of the present system which tries with one mechanism both to change individual case decision and also feed back information on trends in decisionmaking which deviate from the Federal standards—the quality assurance function. In carrying out the first function, the system appears to be ineffective—in that just a handful of decisions are changed. It also may be unfair in the sense that some people who are unlucky or lucky enough to be sampled lose or gain benefit. Thus, this would seem to be an argument for eliminating this aspect of the sample review.¹⁴ But if central or regional office review becomes purely a quality assurance operation the individual determination of disability and its review becomes even more crucial at the initial level.

Options for the subcommittee to consider are many. At one pole might be retention of the present system with a return to a very substantial preadjudicative review, while at the other extreme might be a structural realignment where the initial adjudication is of such reliability that the system can be effectively monitored by a "pure" quality assurance mechanism.

¹³ The administration's 1979 budget recommendation is somewhat at odds with this type of thinking in that the Social Security Administration's request for more resources in tier II quality assurance were substantially reduced. The Office of Management and Budget cut the request by about 120 man-years in 1978 and 140 in 1979. These resources were designed to bring sample review up from 2 1/2 to 5 percent on a national basis and to increase review of and assistance to States with high delinquency rates. (See appendix C.)

Such a move, however, might lead to further deterioration of BDI case reviewers' morale and effectiveness. There have been indications of job dissatisfaction with some BDI examiners because they now, as contrasted with pre-100-percent, believe they are engaged in an academic undertaking. Others also see this as loosening up State adjudicators who are much less likely to get Federal writebacks under the new system.